

LAW OFFICES

ROSS & HARDIES

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

150 NORTH MICHIGAN AVENUE

CHICAGO, ILLINOIS 60601-7567

312-558-1000

TWX NUMBER  
910-221-1154

TELECOPIER  
312-750-8600

529 FIFTH AVENUE  
NEW YORK, NEW YORK 10017-4608  
212-949-7075

580 HOWARD AVENUE  
SOMERSET, NEW JERSEY 08875-6739  
201-563-2700

888 SIXTEENTH STREET, N.W.  
WASHINGTON, D.C. 20006-4103  
202-296-8600

SUSAN G. LICHTENFELD

December 10, 1991

VIA FEDERAL EXPRESS

1-345A002, 17623

RECORDATION NO. FILED 1425

DEC 11 1991 - 11 15 AM

INTERSTATE COMMERCE COMMISSION

DEC 11 11 14 AM '91  
MOTOR OPERATING UNIT

Mr. Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue  
Washington, D.C. 20423

Dear Mr. Strickland:

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are one original executed copy and three photostatic copies of a Loan and Security Agreement, dated December 6, 1991 between IC Leasing Corporation I, as Borrower and Hitachi Credit America Corp., as Lender, a Primary Document, as defined in the Commission's Rules for the Recordation of Documents.

The name and address of the parties to the enclosed document are:

Borrower: IC Leasing Corporation I  
1077 East Sahara Avenue  
Las Vegas, Nevada 89193

Lender: Hitachi Credit America Corp.  
777 West Putnam Avenue  
Greenwich, Connecticut 06830

A description of the railroad equipment covered by the enclosed document is set forth in Schedule A hereto.

Also enclosed is a check in the amount of \$16.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Mr. Sidney L. Strickland, Jr.  
December 10, 1991  
Page 2

Following is a short summary of the enclosed document:

Loan and Security Agreement from IC Leasing Corporation I, Borrower, to Hitachi Credit America Corp., Lender, granting a lien and security interest in 44 used SD 40-2 locomotives with road numbers IC 6100 through IC 6143, inclusive.

Very truly yours,

  
Susan G. Lichtenfeld

SGL:ed  
w/encl.

cc: Robert W. Kleinman

SCHEDULE A

The Units

44 used SD 40-2, 3000 HP Six-Motor Diesel Electric Locomotives  
bearing the following road numbers:

Existing Road Numbers: (inclusive)

BN 6708-6713

BN 6715-6752

New Road Numbers: (inclusive)

IC 6100-6143

Interstate Commerce Commission  
Washington, D.C. 20423

12/11/91

OFFICE OF THE SECRETARY

Susan G. Lichtenfeld

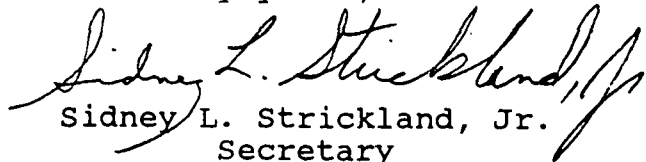
Ross & Hardies

150 North Michigan Avenue  
Chicago, Illinois 60601-7567

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/11/91 at 11:15am, and assigned recordation number(s). 17623

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

8 PC  
RWK-MAZ-7  
S/ed

17623  
RECEIVED 12 FEB 1992

DEC 11 1991 -11 25 AM

INTERSTATE COMMERCE COMMISSION

### LOAN AND SECURITY AGREEMENT

This LOAN AND SECURITY AGREEMENT ("Agreement") is made and entered into as of the 6th day of December, 1991 by and between IC LEASING CORPORATION I, a Nevada corporation ("Borrower"), and HITACHI CREDIT AMERICA CORP., a Delaware corporation ("Lender").

#### WITNESSETH:

WHEREAS, the defined terms in Exhibit A annexed hereto are hereby incorporated herein;

WHEREAS, Borrower has requested that Lender finance the purchase of up to forty-four (44) used SD 40-2 locomotives and that Lender finance a portion of the cost of refurbishing such locomotives on the terms and conditions set forth herein;

WHEREAS, subject to the terms and conditions set forth herein, Lender will provide the financing requested by Borrower.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

#### A. THE LOANS

A.1 The Loans. Subject to fulfillment of the conditions specified herein, Borrower agrees to borrow from Lender and Lender agrees to lend to Borrower, the amounts hereinafter requested by Borrower to be used to finance the purchase price of up to forty-four (44) used SD 40-2 diesel electric locomotives originally manufactured by the Electro-Motive Division of General Motors Corporation, as more fully identified on Exhibit B attached hereto (as said Exhibit is amended and supplemented during the term hereof) (individually a "Unit" and collectively the "Units") and additional funds to finance a portion of the refurbishment to be made to the Units pursuant to oral or written agreements or understandings relating to the refurbishment of the Units (the "Refurbishment Agreements"), provided that the aggregate principal amount of all loans or advances to be made to Borrower hereunder shall not exceed \$11,880,000.

(1) The Initial Funding Date. On December 16, 1991 (such date being hereinafter referred to as the "Initial Funding Date") and subject to the satisfaction of the conditions set forth herein, Borrower will borrow from Lender and Lender will advance to Borrower the sum of \$11,000,000 with such advance to be paid by Lender to the Seller under the Conditional Sale Agreement in satisfaction and discharge of the purchase price of the Units and in consideration of the Seller releasing its lien and purchase money security interest in the Units; provided, however, that if 44 Units are not settled for under the Conditional Sale Agreement on the Initial Funding Date, the amount of the advance to be made by Lender on the Initial Funding Date shall be reduced by \$250,000 for each Unit less than 44 that is settled for under the Conditional Sale Agreement on the Initial Funding Date.

(2) Additional Funding Dates. In addition to the advance to be made on the Initial Funding Date, Borrower shall borrow from Lender and Lender shall advance to Borrower on such dates as are specified by Borrower after not less than ten (10) days prior written notice to Lender (each such date being hereinafter referred to as a "Funding Date"), the amount necessary to pay the refurbishment cost of the Units in accordance with the provisions of the Refurbishment Agreements (or to reimburse Borrower for such costs to the extent such costs have previously been paid by Borrower to Rebuilder), provided that Borrower shall have complied with the terms and conditions set forth herein and provided further that:

- (i) Any such Funding Date shall occur no more frequently than once in each calendar quarter;
- (ii) The amount to be advanced hereunder for refurbishment costs shall not exceed, in the aggregate, \$20,000 multiplied by the total number of Units the purchase price of which was advanced on the Initial Funding Date; provided that in no event shall the amount advanced for the refurbishment of any Unit exceed an aggregate average of \$50,000 for each Unit as to which refurbishment has been completed;
- (iii) The amount to be advanced by Lender to Borrower shall not exceed 100% of the actual refurbishment costs paid by Borrower under the Refurbishment Agreements if the refurbishments were performed by an entity unaffiliated with Borrower or, if the refurbishments were performed by an entity affiliated with Borrower, the amount to be advanced shall not exceed the actual direct labor and material

expenses incurred by such affiliated entity in performance of the refurbishment services plus 212 percent of direct labor expense and 14 percent of the direct cost of materials and supplies utilized or incurred by such entity in performing the refurbishments to the Units; and

- (iv) No Funding Date shall occur after January 31, 1993.

Prior to each Funding Date, Borrower shall deliver to Lender an Advance Certificate in the form of Exhibit C attached hereto, specifying the amount of the advance requested, certifying that the funds to be advanced pursuant to such Certificate are within the maximum permitted limit under this Agreement, and containing such other information as is required by the form of the Certificate.

(3) The Initial Funding Credit Note. On the Initial Funding Date, Borrower shall execute and deliver to Lender, to evidence the loan to be made to Borrower on such date, its promissory note (the "Initial Funding Credit Note") in substantially the form of Exhibit D attached hereto. The Initial Funding Credit Note shall be dated the Initial Funding Date, shall be in the principal amount of the loan made on the Initial Funding Date, shall have a final maturity of July 1, 1999, shall bear interest calculated in the manner set forth in the immediately succeeding paragraph and shall be payable in installments of principal and interest calculated as follows:

- (i) if the Initial Funding Credit Note is dated any date other than the first day of a calendar month, an initial installment of accrued interest only calculated from the date of the Initial Funding Credit Note to and including the last day of such month, payable on the first day of the immediately succeeding calendar month, and calculated on the basis of actual number of days elapsed in a 365/366 day year;
- (ii) in equal monthly installments of principal and interest (reasonably calculated by the Lender assuming the life of the loan was for approximately ten (10) years), with such installments to be payable on the first day of each calendar month during the term of the Initial Funding Credit Note occurring after the first whole calendar month; and

- (iii) a final installment equal to all unpaid principal and accrued interest, which shall be due and payable on July 1, 1999.

The Initial Funding Credit Note shall bear interest on the unpaid principal amount outstanding from time to time thereunder at the Index Rate for the Initial Funding Credit Note which shall be calculated and determined by Lender as follows: The Index Rate for the Initial Funding Credit Note shall be that interest rate which is 185 basis points in excess of the yield to maturity for the 15.75% United States Treasury Notes maturing November, 2001, with such Index Rate to be reasonably calculated by Lender two business days prior to the Initial Funding Date by averaging for each of the five business days preceding the date of this Agreement the yield to maturity for such Treasury Notes as published by the Wall Street Journal, or any successor publication, or if no successor publication is in existence, by reference to the yield for such Treasury Notes published by the Federal Reserve Bank of New York on the date which most recently preceded the date of this Agreement. Except as set forth in clause (i) of this subsection (3) of Section A.1, all calculations of interest under the Initial Funding Credit Note shall be made on the basis of a 360-day year containing 12 30-day months.

(4) The Refurbishment Credit Notes. On each Funding Date occurring after the Initial Funding Date, Borrower shall execute and deliver to Lender, to evidence the loan to be made to Borrower on such date, its promissory note (individually, the "Refurbishment Credit Note" and, collectively, the "Refurbishment Credit Notes") in substantially the form of Exhibit E attached hereto. The Initial Funding Credit Note and the Refurbishment Credit Notes are hereinafter sometimes referred to individually as a "Credit Note" and collectively as the "Credit Notes". Each Refurbishment Credit Note shall be dated the Funding Date to which it relates, shall be in the principal amount of the loan made on such Funding Date, shall have a final maturity of July 1, 1999, shall bear interest calculated in the manner set forth in the immediately succeeding paragraph and shall be payable in installments of principal and interest calculated as follows:

- (i) if the Refurbishment Credit Note is dated any date other than the first day of a calendar month, an initial installment of accrued interest only calculated from the date of the Refurbishment Credit Note to and including the last day of such month, payable on the first day of the immediately succeeding calendar month, and calculated on the basis of actual number of days elapsed in a 365/366 day year;



- (ii) in installments of all accrued and unpaid interest, payable on the first day of each calendar month during the term of the Refurbishment Credit Note occurring after the first whole calendar month to and including the Cutoff Date;
- (iii) in equal monthly installments of principal and interest (reasonably calculated by Lender assuming the Refurbishment Credit Note was to mature on January 1, 2002), payable on the first day of each calendar month during the term of the Refurbishment Credit Note occurring subsequent to the Cutoff Date; and
- (iv) a final installment equal to all unpaid principal and accrued interest, which shall be due and payable on July 1, 1999.

Each Refurbishment Credit Note shall bear interest on the unpaid principal amount outstanding from time to time thereunder at the LIBOR Rate for the period to but not including the Cutoff Date and at the applicable Index Rate for the period from and after the Cutoff Date. The applicable Index Rate for each Refurbishment Credit Note shall be that interest rate which is 185 basis points in excess of the yield to maturity for the 15.75% United States Treasury Notes maturing November, 2001, with such Index Rate to be reasonably calculated by Lender two business days prior to the Cutoff Date by averaging for each of the five preceding business days the yield to maturity for such Treasury Notes as published by the Wall Street Journal, or any successor publication, or if no successor publication is in existence, by reference to the yield for such Treasury Notes published by the Federal Reserve Bank of New York on the date which most recently preceded the Cutoff Date. Except as set forth in clause (i) of this subsection (4) of Section A.1, all calculations of interest under the Refurbishment Credit Notes shall be made on the basis of a 360-day year containing 12 30-day months.

**A.2 Prepayments.** No prepayment of any Credit Note or of the Credit Notes may be made except to the extent and in the manner expressly permitted by this Section A.2.

(1) Mandatory Prepayments-Casualty Occurrences.  
In the event of a termination of the Lease pursuant to the provisions of Section 7 thereof (relating to Casualty Occurrences) with respect to any Unit, on the date of such termination, Borrower shall prepay and apply, and there shall become due and payable, a principal amount of the Credit Notes equal to the then outstanding principal balance of all Credit Notes divided by the total number of Units then subject to this Agreement, together with all accrued and unpaid interest

thereon. Upon making the payment required by this subsection (1) of Section A.2 and compliance by Borrower with all other terms and provisions of this Agreement, the Unit sustaining a Casualty Occurrence shall thereafter not be deemed to be a Unit subject to this Agreement.

(2) Payments for Certain Casualty Occurrences.

With respect to each prepayment of principal which is attributable to a Casualty Occurrence under Section 7 of the Lease and which is unrelated to the loss, theft, destruction or irreparability (under customary industry standards) of the Unit, or which exceeds four (4) Casualty Occurrences in any calendar year, Borrower shall pay to Lender, in addition to the amounts payable pursuant to subsection (1) of this Section A.2, on the date the prepayment of principal is required to be made pursuant to such subsection, the Prepayment Fee, calculated as described in subsection (6) of this Section A.2.

(3) Failure to Fund Refurbishment Costs. Borrower has agreed with Lender to incur total refurbishment costs for the Units (calculated in accordance with the provisions of clause (iii) of subsection (2) of Section A.1) in the aggregate amount of \$1,320,000, exclusive of the portion of the refurbishment costs to be advanced to Borrower by Lender pursuant to the provisions of Section A.1 hereof. If, on January 1, 1994, the amount of refurbishment costs (as so calculated) paid by Borrower, exclusive of refurbishment costs which were the subject of advances made by Lender to Borrower (the "Aggregate Unreimbursed Refurbishment Costs"), is less than \$1,320,000, Borrower shall prepay and apply, and there shall become due and payable, a principal amount of the Credit Notes equal to 40% of the difference between \$1,320,000 and the Aggregate Unreimbursed Refurbishment Costs, together with all accrued and unpaid interest thereon.

(4) Application of Mandatory Prepayments. The principal amount of any mandatory prepayments made under subsection (1) or (3) of this Section A.2 shall be applied to reduce the outstanding principal balance of the Credit Note which was first issued under this Agreement or, if such Credit Note shall have been fully repaid, to the Credit Note then outstanding which was first issued under this Agreement.

(5) Optional Prepayment. Upon any installment payment date occurring on or after January 1, 1996 as is specified by Borrower in a notice delivered to Lender not less than 60 days prior thereto, Borrower may prepay all but not less than all of the principal and accrued interest on all outstanding Credit Notes, together with the Prepayment Fee, calculated as described in subsection (6) of this Section A.2. Upon issuance by Borrower of the notice of optional prepayment, all principal and accrued interest and the Prepayment Fee shall be due and

payable by Borrower to Lender on the date set forth in such notice and such notice, when issued, shall be irrevocable by Borrower.

(6) Prepayment Fee. Whenever required to be calculated hereunder, the Prepayment Fee shall be reasonably calculated by Lender to be an amount equal to the higher of:

- (i) 1% of the principal balance then being prepaid; or
- (ii) the amount by which the present value of all outstanding installments of principal and interest under all Credit Notes (discounted at the then current yield to maturity for the 15.75% United States Treasury Notes maturing November, 2001, or if such issue of Treasury Notes is no longer outstanding or traded, then discounted at the then current yield to maturity for United States Treasury obligations trading closest to par and having a maturity during January, 2002) exceeds the then outstanding principal balance of all Credit Notes; provided, however, that if less than the entire outstanding principal balance under all Credit Notes is then being prepaid, the amount calculated shall be multiplied by a fraction, the numerator of which is the principal amount being prepaid and the denominator of which is the outstanding principal balance under all Credit Notes.

(6) Recalculation of Remaining Installments. With respect to any mandatory prepayments made pursuant to subsections (1) or (3) of this Section A.2, the remaining installments of principal and interest under the Credit Note being prepaid shall be recalculated so that such remaining installments of principal and interest (calculated at the Index Rate applicable to such Credit Note) are, as reasonably determined by Lender, approximately proportional in amount to the installments of principal and interest in effect under such Credit Note prior to such prepayment.

(7) Applications of Payments Under Guaranty. With respect to the payment by the Guarantor under the Guaranty of the Balloon Payment to the Lender, the Lender agrees to apply the Balloon Payment to the outstanding principal balance of the Credit Notes as follows:

- (i) an amount of the principal of each Credit Note shall be prepaid equal to the present value

(calculated at the Index Rate applicable to such Credit Note) of that portion of the installment of principal and interest due on such Credit Note on July 1, 1999 which exceeds an amount equal to the amount of the installment of principal and interest due on such Credit Note on June 1, 1999 without giving effect to any adjustments made pursuant to this Section A.2;

- (ii) all remaining installments of principal and interest under each Credit Note shall be recalculated, if necessary, to provide that each remaining installment of principal and interest (calculated at the Index Rate applicable to such Credit Note) is equal in amount over the remaining term of such Credit Note; and
- (iii) solely for the purpose of the calculations called for in this subsection (7), any acceleration of the principal of any Credit Note should be disregarded.

### A.3 Conditions Precedent to Loans.

(1) Loan Made on the Initial Funding Date. The obligation of Lender to make the loan on the Initial Funding Date shall be subject to fulfillment of the following conditions to the satisfaction of Lender and its counsel:

(a) On or prior to the Initial Funding Date, copies of the following documents shall have been delivered to each party thereto, with fully executed counterparts delivered to Lender:

- (i) this Agreement;
- (ii) the Advance Certificate for the funds being borrowed;
- (iii) the Initial Funding Credit Note;
- (iv) the Assignment of Lease and Agreement in the form attached hereto as Exhibit F;
- (v) the Pledge Agreement in the form attached hereto as Exhibit G; and
- (vi) the Guaranty in the form attached hereto as Exhibit H.

(b) On or prior to the Initial Funding Date, Lender shall have also received:

- (i) certified copies of the appropriate proceedings of the board of directors of Borrower with respect to this Agreement, the Credit Notes, and the other instruments contemplated herein and therein and to the execution, delivery and performance thereof by Borrower;
- (ii) certified copies of the Articles or Certificates of Incorporation and bylaws of Borrower;
- (iii) incumbency certificate of Borrower with respect to those officers executing this Agreement, the Lease, the Credit Notes and the other documents delivered by Borrower in connection herewith or therewith;
- (iv) Closing Certificate of Borrower certifying that the representations and warranties of Borrower contained herein and in any documents or certificates delivered pursuant hereto are true and correct on and as of the Initial Funding Date with the same effect as though made on and as of the Initial Funding Date; that on the Initial Funding Date there is no default under the Lease, or the occurrence of any event which, but for the lapse of time or the giving of notice, or both, would constitute such a default; and that Borrower is not in default with respect to any of its obligations under this Agreement or any of the Refurbishment Agreements, nor has any event occurred which, but for the lapse of time, or the giving of notice, or both, would constitute such a default;
- (v) evidence of filing of this Agreement, the Lease, the Assignment of Lease and Agreement and such other documents as Lender may reasonably require with the ICC pursuant to 49 U.S.C. §11303;

- (vi) evidence Satisfactory to Lender that Borrower has good and marketable title to the Units then being paid for under the Conditional Sale Agreement, free of all claims, liens, security interests and other encumbrances except Permitted Encumbrances;
- (vii) a fully executed counterpart of the Lease, together with all Schedules thereto, in form and substance Satisfactory to Lender;
- (viii) the Acknowledgement and Notice of Assignment executed by Lessee in substantially the form attached to the Assignment of Lease and Agreement;
- (ix) certified copies of the appropriate proceedings of the board of directors of Lessee with respect to the Lease, the Acknowledgement and Notice of Assignment, and the other documents contemplated therein and to the execution, delivery and performance thereof by Lessee;
- (x) incumbency certificate of Lessee with respect to those officers executing the Acknowledgement and Notice of Assignment;
- (xi) opinion of counsel to Lessee, in substantially the form attached hereto as Exhibit I;
- (xii) opinion of counsel to Guarantor, in substantially the form attached hereto as Exhibit J;
- (xiii) certified copies of the appropriate proceedings of the board of directors of Guarantor with respect to the Guaranty and to the execution, delivery and performance thereof by Guarantor;

- (xiv) incumbency certificate of Guarantor with respect to those officers executing the Guaranty;
- (xv) certified copies of the appropriate proceedings of the board of directors of IC Financial with respect to the Pledge Agreement and the other instruments contemplated therein and to the execution, delivery and performance thereof by IC Financial;
- (xvi) incumbency certificate of IC Financial with respect to those officers executing the Pledge Agreement;
- (xvii) officer's certificate of IC Financial certifying that the representations and warranties of IC Financial contained in the Pledge Agreement and in any documents or certificates delivered pursuant thereto are true and correct on and as of the Initial Funding Date with the same effect as though made on and as of the Initial Funding Date; and that on the Initial Funding Date there is no default under the Pledge Agreement, or the occurrence of any event which, but for the lapse of time or the giving of notice, or both, would constitute such a default;
- (xviii) opinion of counsel to IC Financial in substantially the form attached hereto as Exhibit K;
- (xix) conformed copies of the Refurbishment Agreements which are embodied in a written instrument, if any;
- (xx) insurance certificates covering the Units;
- (xxi) opinion of counsel to Borrower, in substantially the form attached hereto as Exhibit L;
- (xxii) such Uniform Commercial Code financing statements as may be

required by Lender in order to perfect the security interest granted to Lender in the Collateral, together with the Uniform Commercial Code search results showing no prior interest of any party in such Collateral;

(xxiii) a copy of the most recent audited financial statements of Lessee and unaudited financial statements of Borrower for the most recent fiscal year, and unaudited financial statements for the last calendar quarter for which such statements are available, in each case certified by an officer of Borrower, and such other interim financial statements and information regarding Lessee or Borrower as may be reasonably requested by Lender; and

(xxiv) such other opinions, approvals, certificates, agreements or other documents as Lender may reasonably request.

(c) There shall not have occurred or exist any material adverse change in the operations, prospects or financial condition of Lessee or Borrower calculated with respect to the period from September 30, 1991 to the Initial Funding Date.

(d) Lender shall have received such evidence of fulfillment of the foregoing conditions of this Section A.3(1), including, without limitation, opinions of counsel or certificates of officers of Borrower, public officials and others, as Lender or its counsel may reasonably require to establish to its satisfaction the fulfillment of such conditions.

(e) Lender's obligation to make the advance hereunder (i) shall not be prohibited by any applicable law or governmental regulation, (ii) shall not subject Lender to any penalty, or in its reasonable judgment, other onerous conditions which arise subsequent to the date of this Agreement under or pursuant to any applicable law or governmental regulation, and (iii) shall be permitted by the laws and regulations of the jurisdictions to which Lender is subject. If requested by Lender, Borrower shall have delivered to Lender factual certificates or other evidence reasonably available to Borrower, in form and substance Satisfactory to Lender, to enable Lender to establish compliance with this condition, to the extent such



compliance relates to the nature, condition, action or inaction of Borrower.

(2) Loan on Subsequent Funding Dates. On each Funding Date subsequent to the Initial Funding Date, the obligations of Lender to make a loan to Borrower hereunder shall be subject to the fulfillment of the following conditions to the satisfaction of Lender and its counsel:

(a) On or prior to each Funding Date, copies of the following documents shall have been delivered to each party thereto, with fully executed counterparts delivered to Lender:

- (i) the Advance Certificate for the funds being borrowed; and
- (ii) a Refurbishment Credit Note, dated such Funding Date, in the principal amount of the loan to be made on the Funding Date and otherwise complying with the provisions of Section A.1 hereof.

(b) On or prior to each Funding Date subsequent to the Initial Funding Date, Lender shall have also received:

- (i) Closing Certificate of Borrower certifying that the representations and warranties of Borrower contained herein and in any document or certificate delivered pursuant hereto are true and correct on and as of the Funding Date with the same effect as though made on and as of the Funding Date; that on the Funding Date, there is no default under the Lease, or the occurrence of any event which, but for the lapse of time or the giving of notice, or both, would constitute such a default; and that Borrower is not in default with respect to any of its obligations under this Agreement or any of the Refurbishment Agreements, nor has any event occurred which, but for the lapse of time, or the giving of notice, or both, would constitute such a default;

- (ii) appropriate waivers of mechanics' and materialmen's liens executed by Rebuilders;
- (iii) copies of invoices to Borrower for the cost of materials and work completed on the Units to which the advance relates, with a certification by Borrower that the amounts set forth on such invoices were calculated in accordance with the requirements of subsection (2)(iii) of Section A.1 hereof, in the case of each invoice submitted by an entity which is affiliated with Borrower; and
- (iv) such other opinions, approvals, certificates, agreements or other documents as Lender may reasonably request.

(c) There shall not have occurred or exist any material adverse change in the operations, prospects or financial condition of Lessee or Borrower calculated with respect to the period from September 30, 1991 to the Funding Date.

(d) Lender shall have received such evidence of fulfillment of the foregoing conditions of this subsection (2) of Section A.3 including, without limitation, certificates of officers of Borrower, public officials and others, as Lender or its counsel may reasonably require to establish to their satisfaction the fulfillment of such conditions.

(e) Lender's obligation to make the advances (i) shall not be prohibited by any applicable law or governmental regulation, (ii) shall not subject Lender to any penalty or, in its reasonable judgment, other onerous conditions which arise subsequent to the date of this Agreement under or pursuant to any applicable law or governmental regulation, and (iii) shall be permitted by the laws and regulations of the jurisdictions to which Lender is subject. If requested by Lender, Borrower shall have delivered to Lender factual certificates or other evidence reasonably available to Borrower, in form and substance Satisfactory to Lender, to enable Lender to establish compliance with this condition, to the extent such compliance relates to the nature, condition, action or inaction of Borrower.

A.4 Representations, Warranties and Covenants.  
Borrower hereby makes the following representations, warranties and covenants, each of which is true and correct on the date

hereof and each of which shall survive the Initial Funding Date and each subsequent Funding Date, as the case may be.

(a) Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada, has full power and authority to own its property and carry on its business as currently conducted and is duly qualified to do business in such other jurisdictions in which the failure to so qualify would have a material adverse effect upon the financial condition of Borrower.

(b) Borrower is conducting its business in such a manner as to comply with all applicable laws and regulations of the United States of America, the several states and the District of Columbia and any subdivision of any thereof wherein Borrower is doing business and of all governmental agencies and authorities of any thereof having jurisdiction in the premises where the failure to so comply would have a material adverse effect on the business, present or prospective, or the operations, property, assets or condition, financial or otherwise, of Borrower.

(c) Borrower has the full power and authority to execute, deliver and perform this Agreement, the Credit Notes, the Refurbishment Agreements, and all other documents referred to herein to which Borrower is a party.

(d) This Agreement has been duly authorized, executed and delivered by Borrower and, assuming due authorization, execution and delivery by Lender, constitutes the legal, valid and binding obligations of Borrower enforceable against it in accordance with its terms.

(e) All documents referred to in this Agreement to which Borrower is a party have been duly authorized, and when executed and delivered by Borrower and, assuming due authorization, execution and delivery by the other parties thereto, shall constitute the legal, valid and binding obligations of Borrower enforceable against it in accordance with their respective terms.

(f) The Credit Notes have been duly authorized by Borrower and, when executed and delivered by Borrower, shall constitute, upon and to the extent of the advance of funds by Lender to Borrower thereunder, the legal, valid and binding obligations of Borrower enforceable against it in accordance with the terms thereof.

(g) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by Borrower of this Agreement, the Refurbishment

Agreements, the Credit Notes and all other documents referred to herein to which Borrower is a party, except for the filing of this Agreement, the Lease and the Assignment of Lease and Agreement with the ICC pursuant to 49 U.S.C. §11303 and the filing of Uniform Commercial Code financing statements in the appropriate state and local offices in which such financing statements have been filed.

(h) Neither the execution, delivery or performance by Borrower of this Agreement, the Refurbishment Agreements, the Credit Notes and all other documents referred to herein to which Borrower is a party, nor compliance with the terms and provisions thereof, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the charter documents, as amended, or by-laws, as amended, of Borrower or any order, writ, injunction or decree of any court or governmental authority against Borrower or by which it or any of its properties is bound, or of any indenture, mortgage or contract or other agreement or instrument to which Borrower is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien not permitted hereby upon any of its properties.

(i) On the Initial Funding Date, Borrower will have good and lawful title to the Units and the good and lawful right to assign the same to Lender, free from all claims, liens, security interests and other encumbrances, except for the rights of Lessee under the Lease and Permitted Encumbrances; upon filing of this Agreement with the ICC and filing of Uniform Commercial Code financing statements with the appropriate state and local filing offices, Lender will have a valid and perfected first priority lien on and security interest in the Collateral superior to the rights of all third persons, and all of the Units are, or will be after refurbishment, in good condition and repair and adequate for the use to which they are being put.

(j) The Lease evidences a bona fide lease of the property described therein to Lessee all as set forth in the Lease, is valid and enforceable against Lessee in accordance with its terms, is in full force and effect and has not been amended, modified or supplemented.

(k) Borrower will not, without the prior written consent of Lender, (i) declare a default or exercise the remedies of the Lessor under the Lease, (ii) amend, modify, issue any consent or waiver of, or grant a release from any provision of the Lease, (iii) terminate, cancel, modify or accept a surrender of the Lease, (iv) offer or accept by affirmative act or permit any cancellation or termination of the Lease, or (v) by affirmative act consent to the creation or existence of any

security interest or other lien to secure the payment of any obligation or indebtedness of Lessee upon the leasehold estate created by the Lease or any part thereof.

(l) There are no documents or agreements material to the obligations of the Lessee under the Lease which have not been delivered to Lender.

(m) Neither Borrower nor anyone acting on its behalf, has directly or indirectly offered any of the Credit Notes, or similar securities relating to the Units, for sale to, or solicited any offer to acquire any of the same from, anyone other than Lender.

(n) The execution and delivery by Borrower of this Agreement, the Refurbishment Agreements, the Credit Notes and the other documents referred to herein to which Borrower is a party will not involve any prohibited transaction within the meaning of ERISA or Section 4975 of the Code, assuming that no portion of the funds to be advanced by Lender hereunder were derived from any employee benefit plan, within the meaning of ERISA.

(o) This Agreement will be, on or prior to the Initial Funding Date, duly filed with the ICC pursuant to 49 U.S.C. §11303, and Borrower shall file statements of additional locomotives with the ICC to the extent such locomotives are added to Exhibit B of this Agreement.

(p) Except for the filings referred to in paragraph (g) hereof, as of the Initial Funding Date and each subsequent Funding Date, there are no security agreements, financing statements or notices signed by Borrower on file in any appropriate public office naming Borrower as debtor and purporting to create or perfect a security interest in (i) the rentals, revenues and payments to be received by Borrower under any leases relating to such Units being financed, or whose refurbishments are being financed, on such date or (ii) the Units being financed, or whose refurbishments are being financed, on such date, and no other filing, depositing or recordation is necessary (A) for the protection of the title of Borrower to the Units in any state of the United States of America or the District of Columbia or (B) for the perfection of the lien and security interest of Lender under this Agreement as against creditors of and purchasers from Borrower.

(q) All statements made by Borrower and contained in any certificate, document, financial statement or other instrument delivered by or on behalf of Borrower pursuant to or in connection with this Agreement shall be deemed to constitute representations and warranties of Borrower under Section A.4 of this Agreement.

(r) The unaudited financial statements of Borrower for each fiscal year will be certified as to completeness and accuracy by the chief executive officer or chief financial officer of Borrower and will be submitted to Lender not later than 120 days after the end of each of Borrower's fiscal years, and quarterly financial statements of Borrower, also certified as to completeness and accuracy by the chief executive officer or chief financial officer of Borrower, will be submitted to Lender not later than 45 days after the end of each fiscal quarter of Borrower.

(s) Borrower will provide to Lender, promptly upon Borrower's receipt thereof, copies of all financial and other information provided to Borrower by Lessee under the Lease, including without limitation the financial information described in Section 25(B) of the Lease; provided, that Borrower shall not be required to deliver to Lender (i) copies of those financial statements of Lessee which Lender has received from Lessee pursuant to the terms of Acknowledgement and Notice of Assignment, or (ii) copies of routine correspondence which is provided to Borrower by Lessee under the Lease and which does not individually or in the aggregate materially affect the value of the Units.

(t) The principal place of business of Borrower is 1077 East Sahara Avenue, Las Vegas, Nevada 89193. Borrower will permit Lender to examine, upon reasonable notice and at reasonable times, all books and records of Borrower concerning the Collateral.

(u) Borrower will not change its name, the address of its principal office or place of business or the place where it maintains its records with respect to the Collateral except upon thirty (30) days prior written notice to Lender, and Borrower shall execute all documents and instruments reasonably requested by Lender in order to continue the perfection of the lien on the Collateral.

(v) Borrower has not engaged and shall not engage in any activity, or take any action, which is unrelated to the transactions described herein, including without limitation, engaging in any other business activity, acquiring additional locomotives, railcars or any other equipment or other assets, or incurring any liabilities or obligations other than those created by the Lease, the Refurbishment Agreements or this Agreement; provided that Borrower shall not be prohibited from engaging in incidental activities related to its corporate existence and the leasing of the Units to Lessee, including the leasing and servicing of its office space and the investment of its corporate funds.

(w) Borrower shall not sell, lease, assign or otherwise transfer or dispose of any of its assets without Lender's prior written consent.

(x) The Annual Covenant Compliance Certificate, in the form of Exhibit M hereto, will be completed by Borrower and certified as to completeness and accuracy by the President or Chief Financial Officer of Borrower and will be submitted to Lender not later than 120 days after the end of each fiscal year of Borrower.

(y) Borrower agrees that during the term of the Credit Notes it will provide and maintain (or cause Lessee to provide and maintain) insurance with respect to the Units, in such amounts and against such risks as shall be Satisfactory in all respects to Lender, with Lender named as an additional insured and loss payee.

(z) Borrower agrees that during the term of the Credit Notes it will keep and maintain (or cause Lessee to keep and maintain) the Units in good operating condition and repair and make all necessary replacements and renewals to the Units so that the operating efficiency thereof shall at all times be maintained and preserved.

A.5 Loan Origination Fee. In addition to all other payments required to be made by Borrower to Lender hereunder or under the Credit Notes, Borrower shall pay Lender on January 1, 1992 a loan origination fee which shall be calculated and determined to be an amount equal to the daily equivalent of the Index Rate applicable to the Initial Funding Credit Note multiplied by \$11,000,000 and further multiplied by the number of days elapsed from and including the date of this Agreement to but not including the first to occur of (i) the date of funding of the Initial Funding Credit Note or (ii) December 31, 1991.

A.6 Borrower's Direct Liability. All obligations of Borrower under the Credit Notes are recourse obligations of Borrower and Borrower shall, therefore, be directly liable for any default under this Agreement and the Credit Notes and shall also be directly liable for any breach of any of its representations, warranties or covenants contained herein. Nothing contained herein shall, however, affect the right of Lender to proceed directly against the Collateral for the full and complete payment of the Indebtedness created hereby.

## B. SECURITY

### B.1 Grant of Security.

(a) In order to secure the prompt payment when due of the principal and interest on the Credit Notes, (whether now or hereafter outstanding) and of all other moneys payable and to be payable to Lender under this Agreement (collectively the "Indebtedness") and the timely and faithful performance and observance by Borrower of all of the agreements, covenants and provisions contained in this Agreement and the Credit Notes, Borrower has granted, conveyed, pledged, sold, mortgaged, assigned, transferred and set over a security interest, and does hereby grant, convey, pledge, sell, mortgage, assign, transfer and set over a lien on and continuing security interest, unto Lender in (i) all of Borrower's right, title and interest including any interest hereafter acquired in every Unit identified on Exhibit B hereof, including any locomotive hereafter added to Exhibit B by way of supplement or amendment; (ii) Borrower's interest in accessions, accessories, equipment, appurtenances and replacement and added parts appertaining or attached to any of the Units owned or hereinafter acquired and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any of said Units (the Units and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any of said Units described in items (i) and (ii) above being hereinafter sometimes collectively referred to herein as the "Security Equipment"), together with all the rents, issues, income, profits, proceeds and avails therefrom and the proceeds thereof; (iii) all proceeds and all present and future evidences of rights to payment (including, without limitation, insurance and indemnity payments) due or to become due to Borrower on account of the lease, sale, loss or other disposition of the Security Equipment; (iv) all rights, claims and causes of action, which Borrower may have under the Refurbishment Agreements or against the manufacturer, Rebuilder or seller of the Security Equipment (or any component thereof) or any other party, by contract or otherwise, in respect of any defect in the Security Equipment; (v) subject to the provisions of the Assignment of Lease and Agreement, all of Borrower's right, title and interest in and to the Lease and the rentals and other payments due thereunder; (vi) the Refurbishment Agreements, bills of sales or other similar documents, agreements and instruments relating to the Units (collectively, the "Documentary Security" or "Security Documentation"), together with all of Borrower's estate, right, title, interest, claims and demand in, to and under such documents, agreements and instruments including all extensions of any of the terms thereof, together with all rights, powers, privileges, options, and other benefits of Borrower, including without limitation the right to receive notices, give consents, exercise any election or option, declare defaults and demand



payments thereunder, and (vii) all rent, damages and other moneys from time to time payable to or receivable by Borrower under the Documentary Security (such Security Equipment, Documentary Security, proceeds, rights, claims and causes of action described in items (i) through (vii) above being herein sometimes collectively called the "Collateral"), to have and to hold all and every part of the Collateral unto Lender, and its successors and assigns, for its and their own use and benefit forever.

(b) PROVIDED FURTHER, that it is expressly understood and agreed that the security interests hereby granted Lender are continuing security interests and will not be deemed to have been extinguished or satisfied in whole or in part notwithstanding the fact that the Indebtedness may be reduced from time to time; provided, however, that with respect to any Unit as to which Borrower made a mandatory prepayment pursuant to subsection (1) of Section A.2, Lender shall, upon Borrower's request, execute and deliver a release of whatever right, title or interest Lender may have acquired in such identified Unit.

(c) PROVIDED FURTHER, and these presents are on the condition that, if Borrower, or its successors or assigns, shall pay or cause to be paid to Lender all of the Indebtedness in accordance with its terms, as provided in this Agreement and the Credit Notes and shall well and faithfully perform and observe all of the agreements, covenants, and provisions hereof and thereof at the time and in the manner specified, then all rights herein assigned to Lender shall cease and terminate, all estate, right, title and interest of Lender in and to the Collateral shall revert to Borrower and this Agreement and rights and powers granted herein and hereby shall cease to be binding and shall be of no further force and effect and, upon the reasonable request of Borrower, Lender shall execute and deliver to Borrower termination statements and other documents necessary to indicate that Lender's security interest was terminated.

(d) PROVIDED FURTHER, that, subject to the terms and provisions hereof and unless otherwise stated herein, Borrower may retain possession (other than the Documentary Security now or hereafter delivered by Borrower to Lender), use and enjoyment of the Collateral, as long as no Default shall have occurred and be continuing.

The rights hereby assigned as security for the obligations of Borrower under this Agreement include, but are not limited to (i) the right to cause Rebuilder to perform the Refurbishment Agreement to which it is a party for the benefit of Lender or its assigns, (ii) the right to reassign the Refurbishment Agreements, (iii) the right to have a nominee of Borrower or Lender or any other assignee perform the Refurbishment Agreements, (iv) the right to make demand directly under the Refurbishment Agreements, and the right to initiate,

prosecute and maintain legal proceedings directly under the Refurbishment Agreements, and to compel performance by such parties of any of their respective obligations contained in the Refurbishment Agreements, all without resulting in the assumption of any obligations of Borrower under the Refurbishment Agreements, except such obligations which are expressly assumed in writing by Lender, any other assignee or any nominee; provided, however, that the rights provided for herein may only be exercised upon a Default by Borrower.

**B.2 Lender as Agent.** Subject to Section B.1 hereof, Borrower hereby appoints Lender, and its successors and assigns, the true and lawful attorney of Borrower, irrevocably and with full power of substitution, in the name of Borrower or otherwise, to demand, receive, compromise, sue for, and give acquittance for, any and all rentals, profits, moneys and claims for money due and to become due under the Lease or otherwise arising out of this Article B, to endorse any checks or other instruments or orders in connection therewith, to make all waivers and agreements and to file any claims or take any actions or institute any proceedings with respect thereto which Lender may deem reasonably necessary or advisable, exercisable at any time on or after the occurrence of any Event of Default set forth in Article C of this Agreement. Anything herein contained to the contrary notwithstanding, neither Lender nor its nominee or assignee shall have any obligation or liability by reason of or arising out of this Article B to make any inquiry as to the nature or sufficiency of, to present or file any claim with respect to, or to take any action to collect or enforce the payment of, any amount to which it may be entitled at any time or times by virtue of this Article B.

**B.3 Perfecting Security.** Borrower hereby represents, warrants and covenants that as of the Initial Funding Date and each subsequent Funding Date (and after giving effect to any filings which Lender has advised Borrower it has previously made) all recordings and filings shall have been made which are necessary or appropriate to perfect Lender's interest in the Collateral, including, without limitation, recordings and filings with the ICC and filings of Uniform Commercial Code financing statements with the appropriate state and local offices, and that no other filings, recordings, depositing or giving of notice is necessary in order to protect the rights of Lender in and to the Collateral. Borrower shall, from time to time and at its own expense, promptly execute, acknowledge, witness, deliver and file and/or record, or procure the execution, acknowledgment, witnessing, delivery and filing and/or recordation of, such documents or instruments, and shall take or cause to be taken such other actions, as Lender may reasonably request for the perfection against Borrower and all third parties whomsoever of the security interest created by this Article B, of the rights and powers herein granted to Lender and for the continuation and

protection thereof and shall promptly give to Lender evidence satisfactory to Lender of such delivery and filing and/or recording. Without limiting the generality of the foregoing, Borrower shall from time to time execute, acknowledge, witness and deliver such financing and continuation statements, notices and additional security agreements, make such notations on its records and take such other action as Lender may reasonably request for the purpose of so perfecting, maintaining and protecting such security interest of Lender, and shall cause this Agreement and each such financing and continuation statements, notices and additional security agreements to be filed or recorded in such manner and in such places as may be required by applicable law and as Lender may reasonably request for such purpose. Borrower hereby authorizes Lender to effect any filing or recording which Lender has requested pursuant to this Section B.3 without the signature of Borrower to the extent permitted by applicable law. The costs and expenses of Lender with respect to such actions shall be payable by Borrower on demand.

B.4 After-Acquired Property. Any and all property described or referred to in Section B.1 hereof which is hereafter acquired shall, without any further conveyance, assignment or act on the part of Borrower or Lender, become and be subject to the security interest herein granted as fully and completely as though specifically described herein. Borrower shall, at its expense, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper for the perfection of the security interest being herein provided for in the Collateral, whether now owned or hereafter acquired.

B.5 Usage. So long as no Default shall have occurred and be continuing, Borrower shall be entitled to the possession and use of each Unit solely within the continental United States and Canada in accordance with the terms of this Agreement; provided, however, that such use shall be limited to refurbishment of the Units under the Refurbishment Agreements or the use of the Units by Lessee as permitted by the terms of the Lease, and no other use shall be permitted.

B.6 Marking of Equipment. Borrower shall, at its expense, cause each Unit to be kept numbered with the identifying road number set forth in Exhibit B hereto, or in the case of any item not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such item, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, the words "Leased from IC Leasing Corporation I and Subject to a Security Interest Recorded with the Interstate Commerce Commission," or other appropriate markings approved in writing by Lender, with appropriate changes thereof in order to protect Lender's security interest in the Unit and its rights

under this Agreement. Borrower shall, at its expense, replace promptly any such markings which may be removed, defaced, obliterated or destroyed and shall not change the number of any Unit except in accordance with a statement of new locomotive number or numbers to be substituted therefor, which statement previously shall have been filed with Lender and filed, recorded and deposited by Borrower in all public offices where this Agreement shall have been filed, recorded and deposited.

**B.7 Registration of Collateral.** Lender, at Borrower's sole expense, shall register or cause to be registered all Units in accordance with any and all applicable federal, State, and local or railroad industry registration requirements, including, without limitation, any registration requirement of the AAR and the ICC or any of their successor organizations.

**B.8 Performance by Borrower.** Borrower represents and warrants that (a) notwithstanding the assignment of the Documentary Security to Lender hereunder, Borrower will perform all of the covenants and conditions in the Documentary Security required to be complied with by it and (b) it has performed all obligations on its part to be performed on or prior to the date hereof and there has not occurred on or prior to the date hereof any default or event of default thereunder.

**B.9 Performance by Lender.** The assignment of the Documentary Security to Lender hereunder is made only as security, and, therefore, shall not subject Lender to, or transfer, or pass, or in any way affect or modify, the liability of Borrower thereunder, it being understood and agreed that notwithstanding such assignment, or any subsequent assignment, all obligations of Borrower to other parties thereunder shall be and remain enforceable by such parties, and their respective successors and assigns, against, and only against, Borrower. Nevertheless, Lender may, at any time and from time to time at its option, upon prior written notice to Borrower, perform any act which is undertaken by Borrower to be performed by Borrower under the Documentary Security or hereunder, but which Borrower shall fail to perform, and, in such case, may take any other action which Lender may deem necessary for the maintenance, preservation or protection of its security interest in the Collateral. All moneys advanced and all expenses (including legal fees) incurred by Lender in connection with such action together with interest at the Default Interest Rate shall be repaid by Borrower to Lender upon demand, and shall be secured hereby as provided herein.

**B.10 Protection of Security.** Borrower shall not:

(a) permit any of the Collateral to be levied upon under legal process or to fall under any other lien or

encumbrance of whatever nature arising as a result of claims against Borrower, except Permitted Encumbrances.

(b) except with the prior written consent of Lender and upon the terms and conditions, if any, specified in such consent, sell, assign (including by virtue of assignments by operation of law), mortgage, pledge or otherwise transfer or encumber any of the Collateral, except as contemplated herein, or take any action which would permit any party other than Lender to perfect any security interest in the Collateral, whether for purchase money or otherwise.

B.11 Indemnity for Acts of Borrower. Borrower covenants and agrees with Lender that in any suit, proceeding or action brought or taken by Lender under the Documentary Security, or this Agreement, Borrower will save, indemnify and keep Lender harmless from and against all expense (including legal fees), loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of any other party thereto, or their respective successors or assigns, arising out of a breach by Borrower of any obligation thereunder or arising out of any other indebtedness or liability at any time owing to any other party thereto, or their respective successors or assigns. Any and all such obligations of Borrower shall be and remain enforceable against and only against Borrower.

B.12 Notices under the Lease or the Refurbishment Agreements. Borrower shall cause copies of all notices received or sent by it in connection with the Lease or any other lease relating to the Units, including, without limitation, any notice of cancellation or termination under the Lease, any default or dispute with respect to the Lease, or any adverse change in any Unit, or any notices under the Refurbishment Agreements to be promptly delivered to Lender at Lender's address below; provided, however, that Borrower shall not be required to deliver to Lender copies of routine correspondence with respect to the Units which do not individually or in the aggregate materially affect the value of the Units. Lender will give Borrower notice of any claim, of which Lender has actual knowledge, by any lessee, or its successors or assigns, under any lease relating to the Units or any party to the Refurbishment Agreements against Borrower which if successful, would result in Borrower liability under Section B.12 hereof, and will permit Borrower to intervene in any such proceedings.

B.13 Taxes. Borrower will pay all taxes in connection with the issuance, sale or delivery of the Credit Notes and the execution and delivery of this Agreement and any other agreements and instrument contemplated hereby and any modification of the Credit Notes, this Agreement or such other agreements and instruments and will save Lender harmless, without limitation as to time, against any and all liabilities with respect to all such

taxes. Borrower will also pay all other taxes, assessments or charges which may be levied on the Credit Notes or interest thereon, except any income tax imposed under the laws of the United States of America, of any State or of any foreign country, and will save Lender harmless, with respect to all such taxes, assessments or charges. The obligations of Borrower under this Section B.13 shall survive the payment or prepayment of the Credit Notes and the termination of this Agreement.

B.14 Disclaimer by Lender. Lender makes no representations or warranties with respect to the Collateral or any part thereof, Lender shall not be chargeable with any obligations or liabilities of Borrower with respect thereto and Lender shall have no liability or obligation arising out of any such claims, known or unknown, with respect to the Collateral.

### C. DEFAULT

C.1 Defaults. The following events are defaults hereunder:

(a) Borrower shall fail to pay an installment of the principal of or interest on any Credit Note when due, whether at the due date thereof, by acceleration, as part of a prepayment or otherwise.

(b) Borrower shall default in performance of its obligations under this Agreement or any other agreement between Borrower and Lender, and such default shall continue for ten (10) days after written notice thereof to Borrower from Lender.

(c) An event of default shall have occurred and be continuing under the Lease.

(d) Any representation or warranty on the part of Borrower made herein or in any report, certificate, financial or other statement furnished in connection with this Agreement or the transactions contemplated herein shall prove to have been false or misleading when made in any respect material to the transactions contemplated hereby.

(e) Borrower shall fail to pay, when due, any obligation for the payment of money incurred or assumed by Borrower (including without limitation obligations under capitalized leases, conditional sale agreements and the like) or shall fail to observe or perform any covenant or agreement in any document creating such obligation for the payment of money, if the effect of such failure is to cause any such obligations to become due prior to its stated maturity.

(f) Any claim, lien or charge shall be asserted against or levied or imposed upon the Collateral which is prior

to or on a parity with the security interest granted hereunder, and such claim, lien or charge shall not be discharged or removed, or bonded against to the reasonable satisfaction of Lender.

(g) Borrower shall (i) file, or consent to the filing against it of a petition for relief under any bankruptcy or insolvency laws, (ii) make an assignment for the benefit of creditors, (iii) consent to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, or other official with similar powers over Borrower or a substantial part of its property, or (iv) take corporate action for the purpose of any of the foregoing.

(h) A court having jurisdiction over Borrower or its property shall enter a decree or order in respect of Borrower or such property in an involuntary case under any bankruptcy or insolvency law, or shall appoint a receiver, liquidator, assignee, custodian, trustee, sequestrator, or official with similar powers over Borrower or any such property, or shall order the winding-up or liquidation of the affairs of Borrower, and such order or decree shall continue in effect for a period of sixty (60) consecutive days.

(i) The sale, lease, assignment or other transfer or disposition of substantially all of the common stock of Borrower or substantially all of the assets of Borrower without Lender's prior written consent.

#### C.2 Effect of a Default.

(a) Remedies. Upon the occurrence of any Default and at any time thereafter so long as the same shall be continuing, but subject always to any mandatory requirements of applicable law then in effect, Lender may, at its option, do any one or more or all of the following acts, as Lender in its sole and complete discretion may then elect:

- (i) by written notice to Borrower declare the entire principal amount of the Credit Notes and any other notes ("Other Notes") executed by Borrower in favor of Lender and any other amounts payable hereunder or under any other agreement between Borrower and Lender to be due and payable, forthwith, whereupon the Credit Notes and the Other Notes shall become due and payable, both as to principal and interest, without presentment, demand or protest of any kind, all of which are hereby expressly waived, anything contained herein or in

the Credit Notes or the Other Notes to the contrary notwithstanding;

- (ii) exercise all rights and remedies of Borrower under the Security Documentation, and Borrower shall have no further rights thereunder until the security interest granted hereunder reverts to Borrower;
- (iii) institute legal proceedings to foreclose upon and against the security interest granted herein to recover judgment for all amounts then due and owing as Indebtedness, and to collect the same out of any of the Collateral or from Borrower directly;
- (iv) institute legal proceedings for the sale, under the judgment or decree of any court of competent jurisdiction, of any of the Collateral;
- (v) institute legal proceedings for the appointment of a receiver or receivers pending foreclosure hereunder or the sale of any of the Collateral under the order of a court of competent jurisdiction or under other legal process;
- (vi) directly, or by agents or attorneys, enter into and upon any premises wherein the Collateral or any part thereof may then be located, and take possession of all or any part thereof or render it unusable, and, without being responsible for loss or damage (other than loss or damage resulting from Lender's gross negligence or willful misconduct), hold, store and keep idle, or operate, lease or otherwise use or permit the use of the same or any part thereof for such time and upon such terms as Lender may determine, in a commercially reasonable manner;
- (vii) directly, or by agents or attorneys, enter into and upon any premises wherein the Collateral or any part thereof may then be located, and take possession of all or any part thereof with or without



process of law and without being responsible for loss or damage (other than loss or damage resulting from Lender's gross negligence or willful misconduct), and sell or dispose of all or any part of the same, free from any and all claims of Borrower or of any other party claiming by, through or under Borrower at law, in equity or otherwise, at one or more public or private sales, in such place or places, at such time or times and upon such terms as Lender may determine, in a commercially reasonable manner with or without any previous demand on or notice to Borrower or advertisement of any such sale or other disposal; the power of sale hereunder shall not be exhausted by one or more sales, and Lender may from time to time adjourn any sale to be made hereunder;

- (viii) demand, collect, and retain all rentals, earnings and all other sums due and to become due pursuant to subsections (vi) or (vii) of this Section C.2(a) from any party whomsoever, accounting only for net earnings arising after charging against all receipts from the use of or sale of the Collateral, all costs and expenses of, and damages or losses by reason of, such use or sale power;
- (ix) if and to the extent the Default results from a breach by Borrower of any representation, warranty or covenant of Borrower contained herein, institute legal proceedings against Borrower to enforce performance of the applicable covenant of Borrower or to recover damages for the breach of any such representation, warranty or covenant; and
- (x) exercise any other right, power, privilege or remedy which may be available to a secured party under the Uniform Commercial Code or any other applicable law.

(b) Notice. If Lender must give prior notice to Borrower of any of the foregoing acts, Borrower hereby covenants and agrees that a notice sent to it in writing by certified mail, return receipt requested, at least ten (10) business days before the date of any such act (or such longer period as may be required by applicable law), at its address provided hereunder shall be deemed to be reasonable notice of such act and, specifically, reasonable notification of the time and place of any public sale hereunder and the time after which any private sale or other intended disposition is to be made hereunder.

(c) Application of Proceeds. The proceeds from the sale of the Collateral pursuant to any of the provisions of this Section C.2 shall be applied by Lender as follows:

- (i) First, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and of all proper expenses, liability and advances, including legal expenses and reasonable attorneys' fees, incurred or made hereunder by Lender, and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made;
- (ii) Second, to the payment to Lender of the amounts of principal and accrued interest unpaid on the Credit Notes; and in case such proceeds shall be insufficient to pay in full the amount unpaid on the Credit Notes, then ratably according to the aggregate of such principal and the accrued and unpaid interest, if any, with application on each Credit Note to be made, first, to the unpaid interest thereof, and thereafter to the unpaid principal thereof; and
- (iii) Third, to the payment of the surplus, if any, to Borrower, its successors and assigns, or to whosoever may be lawfully entitled to receive the same.

C.3 Waiver by Borrower. To the fullest extent that it may lawfully so agree, Borrower shall not at any time insist upon, claim, plead, or take any benefit or advantage of, any appraisal, valuation, stay, extension, moratorium, redemption or any similar law now or hereafter in force in order to prevent,

delay or hinder the enforcement of this Agreement or the absolute sale of any part or all of the Collateral or the possession thereof by any purchaser at any sale pursuant to Section C.2 above; and Borrower, for itself and all who may claim through it, as far as it or they now or hereafter lawfully may so do, hereby waives the benefit of all such laws and all right to have the Collateral marshalled upon any foreclosure hereof, and agrees that any court having jurisdiction to foreclose under this Agreement may order the sale of the Collateral as an entirety.

C.4 Right to Purchase Collateral. At any sale pursuant to Section C.2 hereof, Lender or its agent may, to the extent permitted by applicable law, bid for and, if Lender is the highest bidder, purchase the Collateral offered for sale, may use any claim for Indebtedness payable to it as a credit against the purchase price and, upon compliance in full with the terms of such sale, may hold, retain and dispose of such property without further accountability therefor to Borrower or any other party.

C.5 Cumulative Rights. Each right, power and remedy herein specifically granted to Lender or otherwise available to it shall be cumulative, and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or otherwise; and each right, power and remedy, whether specifically granted herein or otherwise existing, may be exercised, at any time and from time to time, as often and in such order as may be deemed expedient by Lender in its sole and complete discretion; and the exercise or commencement of exercise of any right, power or remedy shall not be construed as a waiver of the right to exercise, at the same time or thereafter, the same or any other right, power or remedy. No delay or omission by Lender in exercising any such right or power, or in pursuing any such remedy, shall impair any such right, power or remedy or be construed to be a waiver of any Default on the part of Borrower or an acquiescence therein. No waiver by Lender of any breach or Default of or by Borrower under this Agreement shall be deemed to be a waiver of any other or similar, previous or subsequent breach or Default.

C.6 Rights Under Security Documentation. Notwithstanding any of the provisions of this Agreement to the contrary, neither Borrower nor Lender shall, in the absence of a default under the Security Documentation, take any action contrary to the rights of Borrower under the Security Documentation except in accordance with the provisions thereof.

#### D. MISCELLANEOUS

D.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrower, Lender and their respective successors and assigns, provided that Borrower

shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of Lender. Borrower acknowledges that Lender may, in its sole discretion, sell or assign Lender's interests in this Agreement, the Credit Notes and the documents referred to herein to which Lender is a party, in whole or in part, to any person, firm, partnership or corporation (an "Assignee"), and that all of the rights of Lender herein and therein may be enforced without limitation by such Assignee(s).

D.2 Governing Law and Amendments. The terms of this Agreement and all rights and obligations of the parties hereto shall be governed by the laws of the State of Illinois, without regard to its conflicts of law doctrine. The terms, rights and obligations contained in this Agreement may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

D.3 Standard of Knowledge. For purposes of this Agreement, no party shall be deemed to have knowledge of any occurrence unless the President, any Vice President or any Assistant Vice President of such party shall have actual knowledge thereof.

D.4 Fees and Expenses. Borrower agrees to pay all of Lender's reasonable out-of-pocket expenses relating to the negotiation, execution, delivery and preparation of this Agreement, the Credit Notes, the documents referred to herein, and any amendments hereto or thereto, including recording costs and filing fees in respect of documents filed or recorded with the ICC and the fees and disbursements of Ross & Hardies, special counsel for Lender. Borrower agrees to pay the fees and disbursements of Railroad Financial Corporation for its services in connection with this transaction. Each party represents to the other that it has not retained or engaged the services of any other broker or agent in connection with the negotiation, placement or consummation of this transaction.

D.5 Notices. All notices and other communications provided for hereunder shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) five (5) days after the date on which it shall have been mailed by United States mail (by certified mail, postage prepaid, return receipt requested), or (c) in the case of notice by such a telecommunications device, when properly transmitted, addressed to each party at the following addresses:

If to Lender:

Hitachi Credit America Corp.  
777 West Putnam Ave.  
Greenwich, Connecticut 06830  
Attention: Chief Operating Officer  
Fax No.: 203-531-0601

With a copy to:

Robert W. Kleinman  
Ross & Hardies  
150 North Michigan Avenue  
Suite 2500  
Chicago, IL 60601  
Fax No.: 312-750-8600

If to Borrower:

IC Leasing Corporation I  
1077 East Sahara Ave.  
Las Vegas, Nevada 89193  
Fax No.: 702-654-3888

With a copy to:

Peter V. Fazio, Jr.  
Schiff, Hardin & Waite  
7200 Sears Tower  
Chicago, IL 60606  
Fax No.: 312-258-5600

or to such other address as any party hereto may designate by prior written notice.

D.6 Survival. All warranties, representations, agreements and covenants made by Borrower herein or in any certificate or other instrument delivered by Borrower shall be considered to have been relied upon by Lender hereto and shall survive the consummation of the transactions contemplated hereby regardless of any investigation made by Lender or on behalf of Lender; provided, however, that no claim or action can be pursued by Lender against Borrower for breach of any representation or warranty contained in Section A.4 hereof after such time as all payments due under the Credit Notes have been paid to and indefeasibly vested in Lender and Borrower shall otherwise have complied with all of its other obligations hereunder and under the Credit Notes. All statements in any such certificate or other instrument shall constitute warranties, representations and covenants by Borrower to the same effect as if set forth herein.

D.7 Headings. The headings of the sections of this Agreement are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

D.8 Entire Agreement. This Agreement, together with the Credit Notes and the documents referred to herein, are intended by the parties as a final expression of their agreement and are intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, together with the Credit Notes supersedes all prior agreements and understanding between the parties with respect to such subject matter.

D.9 Attorneys' Fees. In any action or proceeding brought to enforce any provision of this Agreement, the Credit Notes, or the documents referred to herein, or where any provision hereof or thereof is validly asserted as a defense, the successful party shall be entitled to recover reasonable attorneys' fees in addition to any other available remedy.

D.10 Severability. If at any time subsequent to the date hereof any provision of this Agreement shall be held by any court of competent jurisdiction to be illegal, void, or unenforceable, such provision shall be of no force and effect, but the illegality or unenforceability of such provision shall have no effect upon and shall not impair the enforceability of any other provision of this Agreement. Borrower shall negotiate in good faith to replace any prohibited, invalid or unenforceable provision with a valid provision or provisions the economic effect of which shall reflect the economic bargain manifested in the prohibited, invalid or unenforceable provision.

D.11 Reproduction of Documents. This Agreement and all documents relating hereto including, without limitation, (a) consents, waivers and modifications which may hereafter be executed, (b) documents received on or as of the Initial Funding Date or any subsequent Funding Date, and (c) financial statements, certificates and other information previously or hereafter furnished to any party hereto, may be reproduced by such party by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process and such party may destroy any original document so reproduced, all at the cost of such party. The parties hereto agree and stipulate that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business) and

that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

D.12 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Loan and Security Agreement as of the date first written above. /

IC LEASING CORPORATION I,  
Borrower

By: Dale W. Phillips  
Title: PRESIDENT

HITACHI CREDIT AMERICA CORP.,  
Lender

By: W.H. Berger  
Title: SVP + COO

STATE OF CONNECTICUT     )  
                                      )   SS:  
COUNTY OF FAIRFIELD     )

On this 6 of December, 1991, before me personally  
appeared William H. BESGEN to me personally  
known, who being by me duly sworn, says that he is the EVP +  
COO of HITACHI CREDIT AMERICA CORP. that  
said instrument was signed on behalf of said corporation by  
authority of its Board of Directors; and acknowledged that the  
execution of the foregoing instrument was the free act and deed  
of said corporation.

Jo Ann DellaCoppa  
Notary Public

(SEAL)

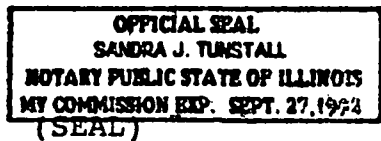
My commission expires:

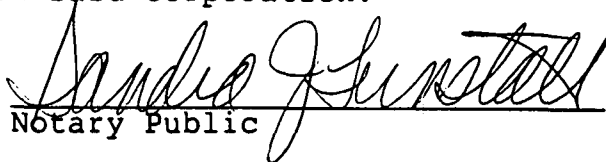
3/31/94



STATE OF ILLINOIS     )  
                              )   SS.  
COUNTY OF COOK        )

On this 6th of December, 1991, before me personally appeared Dale W. Phillips to me personally known, who being by me duly sworn, says that he is the President of IC LEASING CORPORATION I, that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



  
Notary Public

My commission expires:

9/27/92

## EXHIBIT A

### DEFINED TERMS

The terms defined in the Loan and Security Agreement where used therein shall have the same meanings as set forth herein unless the context otherwise requires.

"AAR" shall mean that Association of American Railroads or any successor organization.

"Advance Certificate" shall have the meaning set forth in Section A.1(2) hereof.

"Aggregate Unreimbursed Refurbishment Costs" shall have the meaning set forth in subsection (3) of Section A.2 hereof.

"Agreement" shall mean this Loan and Security Agreement.

"Assignment of Lease and Agreement" shall mean the Assignment of Lease and Agreement from Borrower to Lender.

"Balloon Payment" shall have the meaning set forth in Section 3 of the Guaranty.

"Casualty Occurrence" shall have the meaning set forth in Section 7 of the Lease.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" shall have the meaning set forth in Section B.1 hereof.

"Conditional Sale Agreement" shall mean the Purchase and Conditional Sale Agreement dated as of August 8, 1991 between United States Trust Company of New York, not in its individual capacity but solely as trustee under the Trust Agreement dated as of January 1, 1976 between United States Trust Company of New York and General Electric Credit Corporation, Union Bank & Trust Company and Packers National Bank In Omaha (collectively, the "Seller"), General Electric Capital Corporation (GECC) and Borrower, which Conditional Sale Agreement was recorded with the ICC on August 19, 1991 and assigned recordation number 17486.

"Credit Note" and "Credit Notes" shall have the meaning set forth in subsection (4) of Section A.1 hereof.

"Cutoff Date" shall mean the first day of the calendar month occurring after the first to occur of (i) January 31, 1993, (ii) the date the aggregate advances made by Lender to Borrower

under subsection (2) of Section A.1 of this Agreement equals \$20,000 multiplied by the total number of Units subject to this Agreement, or (iii) the first day of the calendar month immediately preceding the month in which the Guarantor makes the Balloon Payment under the Guaranty.

"Default" and "Event of Default" shall mean any of the defaults described in Section C.1 hereof.

"Default Interest Rate" shall mean the rate of interest otherwise payable on the Indebtedness plus 2% per annum.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Funding Date" shall mean any date funds are advanced under this Agreement which date is subsequent to the Initial Funding Date as described in Section A.1 hereof.

"Guarantor" shall mean Illinois Central Corporation, a Delaware corporation.

"Guaranty" shall mean the Guaranty Agreement made by the Guarantor to the Lender.

"IC Financial" shall mean IC Financial Services Corporation, a Delaware corporation.

"ICC" shall mean the Interstate Commerce Commission or any successor organization.

"Indebtedness" shall mean any obligation for borrowed money created pursuant to the terms of this Agreement or the Credit Notes.

"Index Rate" shall have the meaning set forth in subsection (3) of Section A.1 hereof.

"Initial Funding Credit Note" shall have the meaning set forth in subsection (3) of Section A.1 hereof.

"Initial Funding Date" shall mean the first date funds are advanced to Borrower under this Agreement.

"Lease" shall mean the Railroad Equipment Lease Agreement dated as of September 5, 1991 between IC Leasing Corporation I, as lessor, and Illinois Central Railroad Company, as lessee.

"Lessee" shall mean the Illinois Central Railroad Company, a Delaware corporation.

"LIBOR Rate" shall mean, for all applicable calculations of interest during any calendar month, that interest rate which is reasonably calculated by Lender to be 200 basis points in excess of the one month London Interbank Offered Rate, as published by the Wall Street Journal, or any successor publication, on the publication date which is the last business day prior to the first day of such calendar month.

"Other Notes" shall have the meaning set forth in Section C.2(a)(i) hereof.

"Permitted Encumbrances" shall mean with respect to the Units: (i) the security interest created by this Agreement; (ii) liens for taxes either not yet due or being contested in good faith and by appropriate proceedings diligently conducted so long as such proceedings shall stay the enforcement thereof and the sale or forfeiture of the Unit or any part thereof or interest therein and so long as Borrower has provided Lender with a bond or other collateral security satisfactory to Lender in an amount not less than the amount of the lien; (iii) undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or employees' liens or other like liens arising in the ordinary course of business and securing obligations which are not delinquent or which shall have been bonded or the enforcement of which shall have been suspended (but only for the duration of such suspension); and (iv) the lien in favor of Seller under the Conditional Sale Agreement, which lien is to be discharged by the payment made by Lender on the Initial Funding Date pursuant to subsection (1) of Section A.1 hereof.

"Pledge Agreement" shall mean the Pledge Agreement dated as of the date of this Agreement between IC Financial and Lender.

"Rebuilder" shall mean the party under each Refurbishment Agreement responsible for refurbishing or reconditioning the Units.

"Refurbishment Agreements" shall have the meaning set forth in Section A.1 hereof.

"Refurbishment Credit Note" shall have the meaning set forth in subsection (4) of Section A.1 hereof.

"Satisfactory" or "Satisfaction" shall mean acceptable to Lender in its sole, absolute and unreviewable discretion.

"Seller" shall have the meaning set forth in the definition of Conditional Sales Agreement herein.

"Unit" and "Units" shall have the meaning set forth in Section A.1 hereof.

EXHIBIT B

The Units

44 used SD 40-2, 3000 HP Six-Motor Diesel Electric Locomotives bearing the following road numbers:

Existing Road Numbers: (inclusive)

BN 6708-6713

BN 6715-6752

New Road Numbers: (inclusive)

IC 6100-6143

EXHIBIT C

ADVANCE CERTIFICATE\*

IC Leasing Corporation I (the "Borrower") hereby certifies to Hitachi Credit America Corp. (the "Lender") that this Certificate is being delivered pursuant to subsection (2) of Section A.1 of the Loan and Security Agreement dated as of December 6, 1991 by and between Borrower and Lender (the "Loan Agreement"). Unless otherwise defined herein, the terms used in this Certificate shall have the meaning assigned to them in the Loan Agreement.

1. Amount of this advance: \$ \_\_\_\_\_
2. Amounts previously advanced under all outstanding Refurbishment Credit Notes: \$ \_\_\_\_\_
3. Number of Units refurbished or to be refurbished with this advance and railcar numbers of such Units: \_\_\_\_\_
4. Number of Units previously refurbished (excluding the Units described in item 3 hereof): \_\_\_\_\_
5. Number of Units to be refurbished (excluding the Units described in item 3 hereof): \_\_\_\_\_

The undersigned further certifies that he is the \_\_\_\_\_ of Borrower, that this Certificate is true, accurate and complete as of the date hereof and that the funds to be advanced pursuant to this Certificate are within the maximum permitted limit under the Loan Agreement.

IN WITNESS WHEREOF, the undersigned has set his hand  
this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

IC LEASING CORPORATION I

By \_\_\_\_\_  
Name:  
Title:

Authorized officer of IC Leasing  
Corporation I

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\* Items 2 through 5 to be completed with respect to fundings under the Refurbishment Credit Notes only.

EXHIBIT D

INITIAL FUNDING CREDIT NOTE

\$11,000,000.00\*

Dated: December \_\_, 1991

FOR VALUE RECEIVED, IC LEASING CORPORATION I, a Nevada corporation ("Borrower"), hereby promises to pay to the order of HITACHI CREDIT AMERICA CORP. ("Lender"), by wire transfer of immediately available federal funds to:

Dai-Ichi Kangyo Bank, Ltd.  
New York Branch  
1 World Trade Center  
Suite 4911  
New York, New York 10048

Acct. No. 15740000316  
ABA No. 026 004 307  
Reference: IC Leasing I - 1991

or such other place as the holder hereof shall from time to time specify to Borrower, the principal amount of \$11,000,000.00\* in lawful money of the United States, together with interest, in like money, from the date hereof on the unpaid principal amount hereof from time to time outstanding at the rate of \_\_\_\_\_ percent per annum.\*\* Except as otherwise set forth in subsection (a) of the immediately succeeding paragraph, all calculations of interest on this Initial Funding Credit Note shall be made on the basis of a 360-day year containing 12 30-day months.

Principal and interest on this Initial Funding Credit Note shall be payable as follows:

- (a) an initial installment of accrued interest only calculated from the date hereof to and including December 31, 1991, payable on January 1, 1992, and calculated on the

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\* Subject to adjustment as provided in subsection (1) of Section A.1 of the Loan and Security Agreement.

\*\* Interest rate to be determined in accordance with the provisions of subsection (3) of Section A.1 of the Loan and Security Agreement.

basis of actual number of days elapsed in a 365/366 day year;

- (b) in monthly installments of principal and interest (as set forth on Schedule A hereto), with such installments to be payable on February 1, 1992 and on the first day of each calendar month thereafter; and
- (c) the entire unpaid principal amount of this Initial Funding Credit Note, together with accrued interest thereon, shall be paid in full on July 1, 1999.

This Initial Funding Credit Note is the Initial Funding Credit Note referred to in, and is entitled to the equal and ratable benefit of, the Loan and Security Agreement dated as of December 6, 1991 (the "Agreement") between Borrower and Lender. This Initial Funding Credit Note is secured by a grant of security made by Borrower to Lender pursuant to the Agreement. Reference is hereby made to the Agreement for a statement of the terms and conditions under which this Initial Funding Credit Note is issued and for a description of the property assigned, the nature and extent of the security and the rights of Lender in respect of such security. Upon the occurrence of an Event of Default (as defined in the Agreement), the principal hereof and accrued interest hereon may be declared due and payable in the manner, upon the conditions and with the effect provided in the Agreement.

This Initial Funding Credit Note, to the extent permitted by applicable law, shall bear interest at the Default Interest Rate (as defined in the Agreement) on any part of the principal or interest hereof or the Prepayment Fee (as defined in the Agreement) not paid when due for any period during which the same shall be overdue. If any payment of principal, interest or the Prepayment Fee on this Initial Funding Credit Note shall become due on a Saturday, Sunday or a date which is a public holiday in Chicago, Illinois, such payment shall be made on the next succeeding business day and interest shall be payable on any principal amount so extended for the period of such extension.

This Initial Funding Credit Note is subject to mandatory prepayment, as provided in the Agreement. In addition, subject to the provisions of subsection (5) of Section A.2 of the Agreement, Borrower has the right to prepay all of the outstanding principal and accrued interest on this Initial Funding Credit Note on any payment date occurring on or after January 1, 1996. Upon any prepayment of this Initial Funding Credit Note pursuant to the provisions of subsection (2) or



subsection (5) of Section A.2 of the Agreement, Borrower shall be obligated to pay the Prepayment Fee.

All prepayments of principal shall be applied to the outstanding principal balance of this Initial Funding Credit Note in accordance with the terms of the Agreement. All payments of the Prepayment Fee, if any, shall be applied to discharge Borrower's obligations with respect to the Prepayment Fee. All other payments under this Initial Funding Credit Note shall be applied first, to the payment of accrued and unpaid interest, and second, to the payment of principal.

Borrower hereby waives presentment, demand or protest of any kind otherwise required in connection with the payment of principal, interest or the Prepayment Fee on this Initial Funding Credit Note or the acceleration of maturity, notice of nonpayment, notice of protest and notice of dishonor. This Initial Funding Credit Note shall be construed in accordance with and governed by the laws of the State of Illinois, without regard to its conflicts of law doctrine.

BORROWER:

IC LEASING CORPORATION I

By: \_\_\_\_\_  
Title: \_\_\_\_\_

SCHEDULE A\*/

<u>Note Payment**</u> <u>Date</u>	<u>Principal</u> <u>Payment</u>	<u>Interest</u> <u>Expense</u>	<u>Total</u> <u>Payment</u>
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\* To be completed after the interest rate is set.

\*\* The first payment date shall be January 1, 1992 (interest only) and the last payment of principal and interest shall be due on July 1, 1999.

EXHIBIT E

REFURBISHMENT CREDIT NOTE

\$ \_\_\_\_\_

Dated: \_\_\_\_\_, 199\_\_

FOR VALUE RECEIVED, IC LEASING CORPORATION I, a Nevada corporation ("Borrower"), hereby promises to pay to the order of HITACHI CREDIT AMERICA CORP. ("Lender"), by wire transfer of immediately available federal funds to:

Dai-Ichi Kangyo Bank, Ltd.  
New York Branch  
1 World Trade Center  
Suite 4911  
New York, New York 10048

Acct No. 15740000316  
ABA No. 026 004 307  
Reference: IC Leasing I - 1991

or such other place as the holder hereof shall from time to time specify to Borrower, the principal amount of \$\_\_\_\_\_ in lawful money of the United States, together with interest, in like money, on the unpaid principal amount hereof from time to time outstanding at the LIBOR Rate (as defined in and calculated for each calendar month in accordance with the provisions of the Agreement, as hereinafter defined) for the period from the date hereof to but not including the Cutoff Date (as defined in the Agreement) and at the Index Rate (as defined in and calculated in accordance with the provisions of the Agreement) for the period from and after the Cutoff Date. Except as otherwise set forth in subsection (a) of the immediately succeeding paragraph, all calculations of interest on this Credit Note shall be made on the basis of a 360-day year containing 12 30-day months.

Principal and interest on this Refurbishment Credit Note shall be payable as follows:

- (a) an initial installment of accrued interest only calculated from the date hereof to and including \_\_\_\_\_, 19\_\_,\*/ payable

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\* The last day of the month in which the Refurbishment Credit Note is dated.

on \_\_\_\_\_ 1, 199\_ \*\*/ and calculated on the basis of actual number of days elapsed in a 365/366 day year;

- (b) in installments of all accrued and unpaid interest with such installments to be payable on \_\_\_\_\_ 1, 199\_ and on the first day of each calendar month thereafter to and including the Cutoff Date;
- (c) in monthly installments of principal and interest (as set forth on Schedule A hereto, to be provided by Lender subsequent to the Cutoff Date in accordance with the provisions of subsection (4)(iii) of Section A.1 of the Agreement) with such installments to be payable on the first day of the calendar month occurring subsequent to the Cutoff Date and on the first day of each calendar month thereafter; and
- (d) the entire unpaid principal amount of this Refurbishment Credit Note, together with accrued interest thereon, shall be paid in full on July 1, 1999.

This Refurbishment Credit Note is one of the Credit Notes referred to in, and is entitled to the equal and ratable benefit of, the Loan and Security Agreement dated as of December 6, 1991 (the "Agreement") between Borrower and Lender. This Refurbishment Credit Note is secured by a grant of security made by Borrower to Lender pursuant to the Agreement. Reference is hereby made to the Agreement for a statement of the terms and conditions under which this Refurbishment Credit Note is issued and for a description of the property assigned, the nature and extent of the security and the rights of Lender in respect of such security. Upon the occurrence of an Event of Default (as defined in the Agreement), the principal hereof and accrued interest hereon may be declared due and payable in the manner, upon the conditions and with the effect provided in the Agreement.

This Refurbishment Credit Note, to the extent permitted by applicable law, shall bear interest at the Default Interest Rate (as defined in the Agreement) on any part of the principal or interest hereof or the Prepayment Fee (as defined in the

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\*\* The first day of the immediately succeeding calendar month.

Agreement) not paid when due for any period during which the same shall be overdue. If any payment of principal, interest or the Prepayment Fee on this Refurbishment Credit Note shall become due on a Saturday, Sunday or a date which is a public holiday in Chicago, Illinois, such payment shall be made on the next succeeding business day and interest shall be payable on any principal amount so extended for the period of such extension.

This Refurbishment Credit Note is subject to mandatory prepayment, as provided in the Agreement. In addition, subject to the provisions of subsection (5) of Section A.2 of the Agreement, Borrower has the right to prepay all of the outstanding principal and accrued interest on this Refurbishment Credit Note on any payment date occurring on or after January 1, 1996. Upon any prepayment of this Refurbishment Credit Note pursuant to the provisions of subsection (2) or subsection (5) of Section A.2 of the Agreement, Borrower shall be obligated to pay the Prepayment Fee.

All prepayments of principal shall be applied to the outstanding principal balance of this Refurbishment Credit Note in accordance with the terms of the Agreement. All payments of the Prepayment Fee, if any, shall be applied to discharge Borrower's obligations with respect to the Prepayment Fee. All other payments under this Refurbishment Credit Note shall be applied first, to the payment of accrued and unpaid interest, and second, to the payment of principal.

Borrower hereby waives presentment, demand or protest of any kind otherwise required in connection with the payment of principal, interest or the Prepayment Fee on this Refurbishment Credit Note or the acceleration of maturity, notice of nonpayment, notice of protest and notice of dishonor. This Refurbishment Credit Note shall be construed in accordance with and governed by the laws of the State of Illinois, without regard to its conflicts of law doctrine.

BORROWER:

IC LEASING CORPORATION I

By: \_\_\_\_\_  
Title: \_\_\_\_\_

SCHEDULE A\*/

<u>Note Payment**/ Date</u>	<u>Principal Payment</u>	<u>Interest Expense</u>	<u>Total Payment</u>
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\* To be completed after the interest rates are set.

\*\* The last payment of principal and interest shall be due on July 1, 1999.

EXHIBIT F

ASSIGNMENT OF LEASE AND AGREEMENT

ASSIGNMENT OF LEASE AND AGREEMENT, dated as of December \_\_, 1991 (hereinafter called the "Assignment") between IC Leasing Corporation I, a Nevada corporation ("Borrower"), and Hitachi Credit America Corp., a Delaware corporation ("Lender").

WHEREAS, Borrower and Lender have entered into a Loan and Security Agreement, dated as of December 6, 1991 (hereinafter called the "Agreement"), pursuant to which Borrower has agreed to borrow from Lender and Lender has agreed to lend to Borrower, upon and subject to the terms and conditions thereof, an aggregate principal amount not to exceed \$11,880,000 to finance the acquisition by Borrower and repair of 44 used SD 40-2 locomotives as more fully described in Exhibit B to the Agreement (hereinafter called the "Equipment"); and

WHEREAS, Borrower and Illinois Central Railroad Company, a Delaware corporation ("Lessee"), have entered into a Railroad Locomotive Lease Agreement dated as of September 5, 1991, as amended to the date hereof (the "Lease") providing for the lease to Lessee of the Equipment; and

WHEREAS, in order to provide further security for the payment of the Indebtedness (as such term is defined in the Agreement) and as an inducement to Lender to make the loans contemplated by the Agreement, Borrower has agreed to assign for security purposes certain of its rights in, to and under the Lease to Borrower.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, as well as the mutual covenants herein contained, the parties hereto do hereby agree as follows:

SECTION 1. Borrower hereby assigns, transfers and sets over onto Lender, its successors and assigns, as collateral security for the payment and performance of the Indebtedness, all of Borrower's right, title and interest as lessor under the Lease, including, but not limited to, the immediate right to receive and collect all rentals and others sums payable to or receivable by Borrower under or pursuant to the provisions of the Lease, whether as rent, casualty payment, termination payment, indemnity, liquidated damages or otherwise (such monies being

hereinafter called the "Payments"); and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease; and to do any and all other things whatsoever which Borrower as lessor is or may become entitled to do under the Lease, including, but not limited to, the right to participate as if Lender was the lawful and exclusive owner of all rights in and to the Equipment and in and to the Lease in all actions, contests or votes in connection with any bankruptcy proceeding in which Lessee is the debtor, and in such a proceeding, Lender shall have the exclusive right to consent or withhold its consent to any extension, waiver or modification of any right or time period set forth in Section 1168 of the Bankruptcy Code of 1978, as amended, and otherwise to enforce all rights of lessor under the Lease. In furtherance of the foregoing assignment and transfer, Borrower hereby authorizes and empowers Lender, in Borrower's own name, or in the name of or as attorney hereby irrevocably constituted for Borrower as lessor, to ask, demand, sue for, collect, receive and enforce any and all sums to which Borrower is or may become entitled under this Assignment and compliance by Lessee with the terms and agreements on their part to be performed under the Lease.

Lender agrees to accept any Payments made by Lessee for the account of Borrower as lessor pursuant to the Lease and to acknowledge receipt of such payments. To the extent received, Lender will apply such Payments to satisfy the obligations to the extent then due and payable of the Borrower under the Agreement, or under the Credit Notes issued to Lender by Borrower pursuant to the terms of the Agreement, and any balance shall be paid by Lender to Borrower within five (5) business days after such Payment is applied to satisfy such obligations of Borrower by bank wire to Borrower of immediately available federal funds at such address as may be specified to Lender in writing, and such balance shall be retained by Borrower unless an Event of Default, as defined in the Lease, exists or with notice, demand or a lapse of time would exist, in which case such balance shall be retained by Lender and applied in accordance with the terms of the Agreement. If Lender applies all or any portion of any Payment to obligations other than the ordinary installment of principal or interest or both to which a Payment relates, it shall promptly notify Borrower of such application, including in such notification a detailed breakdown of the application of funds to such obligations.

SECTION 2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject Lender to, or transfer, or pass, or in any way affect or modify, the liability of Borrower under the Lease, it being understood and agreed that, notwithstanding this



Assignment, or any subsequent assignment, all obligations, if any, of Lender to Lessee shall be and remain enforceable by Lessee only against Borrower or persons other than Lender.

SECTION 3. To protect the security afforded by this Assignment, Borrower further agrees as follows:

(a) Borrower will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by Borrower (other than any act or omission in respect of which Lessee has assumed responsibility under the Lease); and, without the express written consent of Lender, Borrower will not anticipate the rents under the Lease or waive, excuse, condone, forgive, or in any manner release or discharge Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by Lessee, including, but not limited to, the obligation to pay the rentals in the manner and at the times and place specified therein, or enter into any agreement amending, modifying or terminating the Lease; and Borrower agrees that any amendment, modification or termination thereof without such consent shall be void; and

(b) Should Borrower fail to make any payment or to do any act which this Assignment requires Borrower to make or do, then Lender may (but shall not be obligated), after first making written demand upon the Borrower and affording Borrower a reasonable period of time within which to make such payment or do such act, and without releasing Borrower from any obligation hereunder or under the Lease, make such payment or do such act in such manner and to such extent as Lender may deem necessary to protect the security hereof, including, but not limited to, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender and also the right to perform and discharge each and every obligation, covenant and agreement of Borrower contained in the Lease. In exercising any such powers, Lender may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and Borrower will reimburse the Lender for such costs, expenses and fees.

SECTION 4. Lender may assign and reassign all or any of its rights under the Lease, including the right to receive any Payments due or to become due thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon the giving by Lender of written notice of such assignment to Borrower and the Lessee, enjoy all the rights and privileges and be subject to all the obligations, if any, of Lender hereunder.

SECTION 5. Borrower hereby agrees that it will from time to time and at all times, at the request of Lender or its successors and assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to Lender or intended so to be, including the execution and acknowledgement of any instrument necessary or appropriate to file, record, register or deposit this Assignment or notice hereof.

SECTION 6. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois, without regard to its conflicts of law doctrine, provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 and such additional rights arising out of the filing, recording, registering or depositing, if any, of the Agreement, the Lease or this Assignment as shall be conferred by the laws of the several jurisdictions in which the Agreement, the Lease or this Assignment shall be filed, recorded, registered or deposited.

SECTION 7. Lender hereby agrees with Borrower that Lender will not, so long as no Event of Default under the Agreement or the Lease, or any event which with notice, demand or lapse of time could constitute an Event of Default under the Agreement or the Lease, has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by Borrower to Lender by this Assignment, except the right to receive and apply the Payments as provided in Section 1 hereof.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to Lender shall be deemed to be the original counterpart.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Assignment to be signed in their respective corporate names by duly authorized officers as of the date first above written.

IC LEASING CORPORATION I

By \_\_\_\_\_  
Title: \_\_\_\_\_

HITACHI CREDIT AMERICA CORP.

By \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF CONNECTICUT     )  
                                  ) SS.  
COUNTY OF FAIRFIELD     )

On this \_\_\_\_ of December, 1991, before me personally  
appeared \_\_\_\_\_ to me personally  
known, who being by me duly sworn, says that he is the \_\_\_\_\_  
\_\_\_\_\_ of HITACHI CREDIT AMERICA CORP. that  
said instrument was signed on behalf of said corporation by  
authority of its Board of Directors; and acknowledged that the  
execution of the foregoing instrument was the free act and deed  
of said corporation.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires:

\_\_\_\_\_

STATE OF NEVADA                    )  
                                      ) SS.  
COUNTY OF CLARK                 )

On this \_\_\_\_ of December, 1991, before me personally  
appeared \_\_\_\_\_ to me personally  
known, who being by me duly sworn, says that he is the \_\_\_\_\_  
\_\_\_\_\_ of IC LEASING CORPORATION I, that said  
instrument was signed on behalf of said corporation by authority  
of its Board of Directors; and acknowledged that the execution of  
the foregoing instrument was the free act and deed of said corpo-  
ration.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires:

\_\_\_\_\_

ACKNOWLEDGEMENT AND NOTICE OF ASSIGNMENT

The undersigned, Illinois Central Railroad Company, a Delaware corporation (hereinafter called the Lessee), the lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Lease Assignment), hereby, as of the \_\_\_\_ day of December, 1991 (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that so long as the Lease Assignment is effective:

(1) it will pay all rentals, casualty payments, termination payments, liquidated damages, indemnities and other monies provided for in the Lease due and to become due under the Lease directly to Hitachi Credit America Corp. ("Lender"), the assignee named in the Lease Assignment, by bank wire transfer of immediately available federal funds to:

Dai-Ichi Kangyo Bank, Ltd.  
New York Branch  
1 World Trade Center  
Suite 4911  
New York, NY 10048

Acct No. 15740000316  
ABA No. 026 004 307  
Reference: IC Leasing I - 1991

or at such other address as may be furnished in writing to the Lessee by Lender;

(2) Lender shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though Lender were named therein as the lessor; provided, that Lender shall not enforce such benefits and rights under the Lease unless an Event of Default (as defined in the Agreement) shall have occurred and be continuing;

(3) Lender shall not, by virtue of the Lease Assignment, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of Lender, be terminated (except as expressly permitted by the terms thereof) or modified nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Acknowledgement or of any of the rights created by any thereof.

Lessee further certifies that the Lease is in full force and effect, has not been amended, modified or supplemented, and is binding upon the Lessee, and that there is no default under the Lease, or the occurrence of any event which, but for the lapse of time or the giving of notice, or both, constitutes such a default.

Lessee further agrees to provide to Lender, at 777 West Putnam Avenue, Greenwich, CT 06830, Attention: Chief Operating Officer, not later than 120 days after the end of each of Lessee's fiscal years, the audited financial statements of Lessee, and not later than 45 days after the end of each fiscal quarter of Lessee, or such later period of time as such statements are reasonably available, the quarterly financial statements of Lessee.

Lessor and Lessee agree that upon the occurrence of an Event of Default under the Lease, the measure of damages recoverable under the provisions of Section 18 B.(i) of the Lease shall in no event be less than an amount equal to the excess, if any, of the Casualty Value of each Unit at the time subject to the Lease as of the rent payment date on, or immediately preceding, the date of termination of the Lease over the amount Lessor reasonably estimates to be the fair market value thereof at such time.

Capitalized terms used herein shall have the same meanings as set forth in the Agreement (as defined in the Lease Assignment), unless otherwise defined herein or unless the context otherwise requires.

This Acknowledgement and Notice of Assignment, when accepted by Lender by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Illinois and for all purposes, shall be construed in accordance

with the laws of said State, without regard to its conflicts of law doctrine.

ILLINOIS CENTRAL RAILROAD  
COMPANY

By \_\_\_\_\_  
Vice President

The foregoing Acknowledgement and Notice of Assignment is hereby accepted and agreed to, as of the \_\_\_\_ day of December, 1991.

HITACHI CREDIT AMERICA CORP.

By \_\_\_\_\_  
Vice President

IC LEASING CORPORATION I

By \_\_\_\_\_  
\_\_\_\_ President



STATE OF ILLINOIS            )  
                                  ) SS:  
COUNTY OF COOK            )

On this \_\_\_\_ of December, 1991, before me personally  
appeared \_\_\_\_\_ to me personally  
known, who being by me duly sworn, says that he is the \_\_\_\_\_  
\_\_\_\_\_ of ILLINOIS CENTRAL RAILROAD COMPANY,  
that said instrument was signed on behalf of said corporation by  
authority of its Board of Directors; and acknowledged that the  
execution of the foregoing instrument was the free act and deed  
of said corporation.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires:

\_\_\_\_\_

STATE OF CONNECTICUT       )  
                                  ) SS:  
COUNTY OF FAIRFIELD       )

On this \_\_\_\_ of December, 1991, before me personally  
appeared \_\_\_\_\_ to me personally  
known, who being by me duly sworn, says that he is the \_\_\_\_\_  
\_\_\_\_\_ of HITACHI CREDIT AMERICA CORP. that  
said instrument was signed on behalf of said corporation by  
authority of its Board of Directors; and acknowledged that the  
execution of the foregoing instrument was the free act and deed  
of said corporation.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires:

\_\_\_\_\_

STATE OF NEVADA       )  
                              ) SS.  
COUNTY OF CLARK     )

On this \_\_\_\_ of December, 1991, before me personally  
appeared \_\_\_\_\_ to me personally  
known, who being by me duly sworn, says that he is the \_\_\_\_\_  
\_\_\_\_\_ of IC LEASING CORPORATION I, that said  
instrument was signed on behalf of said corporation by authority  
of its Board of Directors; and acknowledged that the execution of  
the foregoing instrument was the free act and deed of said corpo-  
ration.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires:

\_\_\_\_\_

EXHIBIT G

PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT, dated as of December \_\_\_, 1991, is made by IC FINANCIAL SERVICES CORPORATION, a Delaware corporation (the "Pledgor"), in favor of HITACHI CREDIT AMERICA CORP., a Delaware corporation (the "Secured Party").

W I T N E S S E T H:

WHEREAS, the Secured Party has agreed to make a loan in the principal amount of up to \$11,880,000 to IC Leasing Corporation I, a Nevada corporation (the "Borrower") under the terms and conditions set forth in that certain Loan and Security Agreement (the "Loan Agreement"), dated as of December 6, 1991, and the Credit Notes (as defined in the Loan Agreement) executed and delivered from time to time to the Secured Party by the Borrower;

WHEREAS, the Pledgor owns 1,000 shares of the common stock, \$.01 par value (the "Shares") of the Borrower, which Shares represent all of the issued and outstanding shares of the capital stock of the Borrower;

WHEREAS, to induce the Secured Party to enter into the Loan Agreement and to secure the Borrower's obligations under the Loan Agreement, the Pledgor has agreed to enter into and deliver this Pledge Agreement to the Secured Party; and

WHEREAS, it is a condition precedent to the funding by the Secured Party under the Loan Agreement that the Pledgor execute and deliver this Pledge Agreement.

NOW, THEREFORE, in order to induce the Secured Party to execute and deliver the Loan Agreement, and in consideration of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms. Capitalized terms used herein shall have the same meanings as set forth in the Loan Agreement, unless otherwise defined herein or unless the context otherwise requires, and the following terms shall have the following respective meanings:

"Agreement" shall mean this Pledge Agreement, as the same may be amended, supplemented or restated from time to time.

"Obligations" shall have the meaning assigned to it in Section 2 of this Agreement.

"Shares" shall have the meaning assigned to it in the preamble to this Agreement.

"Pledged Stock Collateral" shall mean, collectively, the Shares and all rights with respect thereto and all income therefrom and proceeds thereof.

"Securities Act" shall mean the Securities Act of 1933, as amended from time to time.

2. Pledge. As collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of all of the Indebtedness and all other obligations of the Borrower now existing under or hereafter arising under the Loan Agreement and the Credit Notes, whether such obligations are liquidated or unliquidated, contingent or matured, disputed or otherwise, and including, without limitation, principal thereof and interest and premium thereon; all costs, expenses and fees now or hereafter owing to the Secured Party in accordance with the Loan Agreement; and all other liabilities and indemnification obligations of the Borrower under the Loan Agreement (collectively, the "Obligations"), and in order to induce the Secured Party to execute and deliver the Loan Agreement, the Pledgor hereby pledges, assigns, hypothecates, transfers and delivers to the Secured Party all of the Shares and hereby grants to the Secured Party a first lien on, and security interest in the Shares.

3. Delivery of Shares. Concurrently with the execution of this Pledge Agreement, the Pledgor shall deliver to the Secured Party the certificates representing the Shares, together with appropriate undated stock powers duly executed in blank in form acceptable to the Secured Party.

4. Dividends and other Distributions. If, while this Agreement is in effect, the Pledgor shall become entitled to receive or shall receive any stock certificate (including, without limitation, any certificate representing a stock dividend or a distribution in connection with any reclassification, increase or reduction of capital, or issued in connection with any reorganization), option or rights, whether as an addition to, in substitution of, or in exchange for any of the Shares, or otherwise, the Pledgor agrees to accept the same as the agent of the Secured Party and to hold the same in trust on behalf of and for the benefit of the Secured Party and to deliver the same forthwith to the Secured Party in the exact form received, with

the endorsement of the Borrower when necessary and/or appropriate undated stock powers duly executed in blank, to be held by the Secured Party, subject to the terms hereof, as additional collateral security for the Obligations. Any sums paid upon or in respect of the Shares in connection with the liquidation or dissolution of the Borrower shall be paid over to the Secured Party to be held by it in trust as additional collateral security for the Obligations; and in case any distribution of capital shall be made on or in respect of the Shares or any property shall be distributed upon or with respect to the Shares pursuant to the recapitalization or reclassification of the capital of the Borrower or pursuant to the reorganization thereof, the property so distributed shall be delivered to the Secured Party to be held by it as additional collateral security for the Obligations. All sums of money and property so paid or distributed in respect of the Shares which are received by the Pledgor shall, until paid or delivered to the Secured Party, be held by the Secured Party in trust as additional collateral security for the Obligations.

5. Voting Rights. Unless an Event of Default shall have occurred and be continuing, the Pledgor shall be entitled to vote the Shares and to give consents, waivers and ratifications in respect of the Shares, provided, however, that no vote shall be cast or consent, waiver or ratification given or action taken which would impair the Shares or the right of the Secured Party hereunder or be inconsistent with or violate any provision of this Agreement or the Loan Agreement.

6. Rights and Remedies. Upon the occurrence of a Default the Secured Party, at its option, shall exercise all rights of the legal and beneficial owner of the Shares, including, without limitation (i) selling the Shares, or any part thereof, at one or more public or private sales or otherwise disposing of the Shares for cash or credit, (ii) voting the Shares to amend the articles of incorporation or bylaws of the Borrower, electing directors of the Borrower and voting on any other action requiring shareholder consent, including, without limitation, the liquidation of Borrower or the sale of all or substantially all of the assets of Borrower; (iii) exercising any one or more of the rights and remedies accruing to a Secured Party under the Uniform Commercial Code of the relevant state or states and any other applicable law.

7. Specific Performance. The Pledgor agrees that a breach of any of the obligations or covenants contained in this Agreement will cause irreparable injury to the Secured Party, that the Secured Party has no adequate remedy at law in respect of such breach and, as a consequence, agrees that each and every covenant and obligation contained in this Agreement shall be specifically enforceable against the Pledgor and the Pledgor

hereby waives and agrees not to assert any defenses against an action for specific performance of such obligations or covenants. The Pledgor further agrees that the Secured Party shall be entitled to temporary and permanent injunctive relief in any case brought against it under this Agreement without the necessity of proving actual damages. Any notice required to be given by the Secured Party of a sale or other disposition of the Shares or any other intended action by the Secured Party shall constitute commercially reasonable and fair notice to the Pledgor if provided to the Pledgor in the manner specified in Section 16 hereof not less than ten (10) days prior to such proposed action.

8. No Waivers; Cumulative Remedies. The Secured Party shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder. A waiver by the Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to or impairment of any right or remedy which the Secured Party would otherwise have on any future occasion. No failure to exercise nor any delay in exercising on the part of the Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

9. Representations, Warranties and Covenants. The Pledgor represents, warrants and covenants, which representations, warranties and covenants shall survive the execution and delivery hereof, as follows:

- (a) The Shares represent all the capital stock of the Borrower, are duly and validly issued, fully paid and non-assessable and are duly and validly pledged hereunder; and the Pledgor represents, warrants and covenants to defend the Secured Party's title and interest in and to the Shares against the claims and demands of any and all persons.
- (b) The Pledgor is the legal and equitable owner of, and has good title to, all of the Shares free and clear of all claims, security interest, mortgages, pledges, liens and other encumbrances of every nature whatsoever, except to or in favor of the Secured Party, and has the right to pledge the Shares as herein provided.

- (c) The security interests described in this Agreement represent a valid first lien on, and security interest in, the Shares superior and prior to the rights of all third persons.
- (d) The Pledgor shall not sell, transfer, assign or otherwise dispose of or grant any option with respect to, or mortgage, pledge or otherwise encumber the Shares or any interest therein or right relating thereto until this Agreement shall have been terminated pursuant to the terms hereof.
- (e) The Pledgor agrees, at its own expense, to execute and deliver, from time to time, any instruments, and to perform such acts, as the Secured Party may reasonably request to effect the purpose of this Agreement and to secure to the Secured Party the benefits of all rights and remedies conferred upon it by the terms of this Agreement including, without limitation, any financing statements or other instruments or documents. The Pledgor also agrees to pay all fees, costs and expenses of recording or filing any such instruments.

10. Waiver of Demand, Notice and Protest. The Pledgor hereby waives demand, notice and protest of any action taken by the Secured Party under this Agreement except those provided herein.

11. Obligations under this Agreement. Subject to the provisions of Section 12 hereof, the Obligations of the Pledgor under this Agreement shall be absolute and unconditional and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstance or occurrence whatsoever.

12. Termination. This Agreement shall terminate upon the payment in full by the Borrower of all of the Indebtedness under the Loan Agreement and the Credit Notes, and, upon termination of this Agreement, the Pledgor shall be entitled to the return of all of the Shares or other securities pledged hereunder which have not been used or applied toward the payment in part or in full of the Obligations hereunder.

13. Binding Effect; Assignments. This Agreement shall bind and inure to the benefit of the respective parties hereto and their respective heirs, executors, successors and assigns. The Secured Party may assign and reassign its rights under this Agreement to any third party, but the Pledgor may not assign its



obligations hereunder without the prior written consent of the Secured Party.

14. Severability. Any provision of this Agreement which is prohibited, invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition, invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction or any other provision of this Agreement. The Pledgor shall negotiate in good faith to replace any prohibited, invalid or unenforceable provision with a valid provision or provisions the economic effect of which shall reflect the economic bargain manifested in the prohibited, invalid or unenforceable provision.

15. Entire Agreement. This Agreement, together with the Loan Agreement, the Credit Notes, and the documents referred to in the Loan Agreement to which the Secured Party and/or the Borrower is a party, contain the entire agreement and understanding between the parties with respect to the subject matter contained herein and therein and supercede all other prior agreements, negotiations, understandings and representations, oral or written. No modification, limitation or release of any of the terms and conditions contained herein or therein shall be made except by mutual agreement to that effect in writing and signed by the respective parties hereto or thereto.

16. Notices. All communications under this Agreement shall be in writing or telecommunications device capable of creating a written record and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier services, (b) five (5) days after the date on which it shall have been mailed by United States Mail (by certified mail, postage prepaid, return receipt requested) or (c) in the case of notice by such telecommunications device when properly transmitted, addressed to each party at the following addresses or to such other address as the party to whom the same is intended shall have specified in conformity with the foregoing:

If to the Pledgor:

IC Financial Services Corporation  
233 North Michigan Avenue, 27th Floor  
Chicago, IL 60601  
Fax No. 312-819-7839

With a copy to:

Peter V. Fazio, Jr.  
Schiff, Hardin & Waite  
7200 Sears Tower-73rd Floor  
Chicago, IL 60606  
Fax No. 312-258-5600

If to the Secured Party:

Hitachi Credit America Corp.  
777 West Putnam Avenue  
Greenwich, CT 06830  
Attention: Chief Operating Officer  
Fax No.: 203-531-0601

With a copy to:

Robert W. Kleinman  
Ross & Hardies  
150 North Michigan Avenue  
Suite 2500  
Chicago, Illinois 60601  
Fax No. 312-750-8600

17. Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Illinois, without regard to its conflicts of law doctrine.

18. Captions. The captions in this Agreement have been inserted for convenience of reference only and in no way limit or amplify the provision hereof.

19. Counterparts; Effectiveness. This Agreement may be executed by the parties hereto any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

IC FINANCIAL SERVICES CORPORATION,  
Pledgor

By: \_\_\_\_\_  
Its: \_\_\_\_\_

HITACHI CREDIT AMERICA CORP.,  
Secured Party

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ANNEX A TO PLEDGE AGREEMENT

Description of Shares

The Shares are represented by the following stock certificates:

<u>Issuer</u>	<u>No.</u>	<u>Certificate Date</u>	<u>Number of Shares</u>
IC Leasing Corporation I	1		1,000

EXHIBIT H

GUARANTY AGREEMENT dated as of December \_\_, 1991, between ILLINOIS CENTRAL CORPORATION, a Delaware corporation (the "Guarantor"), and HITACHI CREDIT AMERICA CORP., a Delaware corporation (the "Lender").

The Guarantor is the owner of all the issued and outstanding capital stock of IC Financial Services Corporation, a Delaware corporation (the "Pledgor"), which is the owner of all of the issued and outstanding capital stock of IC Leasing Corporation I, a Nevada corporation (the "Borrower").

The Borrower has applied to the Lender for a loan in the principal amount of \$11,880,000 (the "Loan") to provide funds to purchase up to forty-four (44) used SD 40-2 diesel electric locomotives originally manufactured by the Electro-Motive Division of General Motors Corporation (the "Units") and to finance a portion of the cost of refurbishing such Units..

\$11,000,000 of the Loan is to be used by the Borrower to purchase the Units and will be evidenced by an Initial Funding Credit Note (the "Initial Funding Credit Note") and \$880,000 of the Loan will be used to refurbish the Units and will be evidenced by one or more Refurbishment Credit Notes (hereinafter collectively referred to as the "Refurbishment Credit Notes"). The Initial Funding Credit Note and the Refurbishment Credit Notes are hereinafter sometimes referred to individually as a "Credit Note" and collectively as the "Credit Notes".

The Units are leased by the Borrower, as lessor, to Illinois Central Railroad Company, as lessee (the "Lessee") under the Lease Agreement between Borrower and Lessee dated September 5, 1991 (the "Lease").

As a condition of the Loan, the Borrower is obligated to comply with certain terms and conditions in the Loan and Security Agreement between the Borrower and the Lender dated as of December 6, 1991 (the "Loan Agreement") and to deliver the Pledge Agreement between the Pledgor and the Lender dated as of the date hereof (the "Pledge Agreement"). (The Credit Notes, the Loan Agreement and the Pledge Agreement are hereinafter collectively referred to as the "Debt Documents").

To induce the Lender to make the Loan, the Guarantor is willing to guaranty certain payments due or to become due under

the Credit Notes and payment of such other sums as may become due and payable pursuant to the terms of this Guaranty Agreement, upon the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the benefits and advantages to be derived by the Guarantor, the Guarantor, as primary obligor and not as surety, covenants and agrees as follows:

1. Definitions. Capitalized terms used herein shall have the same meanings as set forth in the Loan Agreement, unless otherwise defined herein or unless the context otherwise requires.

2. Guaranty. The Guarantor, as primary obligor and not as surety, hereby unconditionally and irrevocably guarantees to the Lender and its successors and assigns the full and immediate payment of the Balloon Payment (as defined in Section 3 hereof) upon the occurrence of any of the events described in Sections 4 or 6 hereof. The Guarantor further agrees to pay any and all costs and expenses (including reasonable fees and disbursements of counsel) that may be paid or incurred by the Lender in collecting the Balloon Payment or in preserving or enforcing any rights under this Guaranty Agreement.

This guaranty is a guaranty of payment, performance and compliance and not of collectibility, is in no way conditioned or contingent upon any attempt to collect from or enforce performance or compliance by, the Borrower or upon any other event, contingency or circumstance whatsoever, and shall be binding upon and against the Guarantor without regard to the validity or enforceability of the Debt Documents or any other document or agreement delivered to Lender pursuant to the terms hereof or thereof.

3. Balloon Payment. The balloon payment, with respect to each Credit Note, shall be that amount of the outstanding principal balance of such Credit Note which is equal to the present value (calculated at the Index Rate applicable to such Credit Note) of that portion of the installment of principal and interest due on such Credit Note on July 1, 1999 which exceeds an amount equal to the amount of the installment of principal and interest due on such Credit Note on June 1, 1999. The aggregate of all balloon payments, calculated in accordance with the provisions of this Section 3, with respect to all Credit Notes then outstanding is referred to as the "Balloon Payment."

4. Events Triggering Balloon Payment. Upon the occurrence of any of the following events, the Guarantor shall be obligated to make the full and prompt payment of the Balloon Payment to the Lender to be applied by the Lender pursuant to subsection (7) of Section A.2 of the Loan Agreement:

(a) if, at any time after December 16, 1994, the rating of the Lessee's senior secured debt (or if no senior secured debt of Lessee is then outstanding, its highest rated publicly held debt obligations other than equipment trust certificates) falls below BB- (as rated by Standard & Poor's Corp.) or Baa3 (as rated by Moody's Investors Services Inc.) and the Lease and the Credit Notes are not extended pursuant to the provisions of Section 5 hereof;

(b) if, at any time after December 16, 1994, Lessee has no publicly rated debt (exclusive of any equipment trust certificates) and Lessee sustains, in the reasonable opinion of Lender, a material adverse change in its business operations, financial condition or prospects, in each case measured with respect to the condition of Lessee at the date hereof and the Lease and the Credit Notes are not extended pursuant to the provisions of Section 5 hereof;

(c) the Guarantor, the Borrower, the Pledgor or the Lessee shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall cease business operations, or shall take any corporate action to authorize any of the foregoing; or

(d) an involuntary case or other proceeding shall be commenced against the Guarantor, the Borrower, the Pledgor or the Lessee seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or proceeding shall remain undismissed and unstayed for a period of sixty (60) days, or an order for relief shall be entered against

the Guarantor, the Borrower, the Pledgor or the Lessee under the federal bankruptcy laws now or hereafter in effect;

(e) the Guarantor takes any action described in Section 6 hereof without obtaining Lender's prior written consent.

5. Option to Extend Lease Term. Upon receipt of notice from the Lender that an event described in Section 4(a) or Section 4(b) hereof has occurred, the Guarantor shall ask the Borrower (as lessor under the Lease) and the Lessee if the parties would agree to an extension of the term of the Lease of not less than two and one half years, with such extension to be on the same terms and conditions as are presently contained in the Lease; provided, however, that the parties may amend the amount of the rental obligations under the Lease so long as the rental obligations are not less than the payments of principal and interest due under the Credit Notes, as extended pursuant to the terms of this Section 5. If the Lessee and the Borrower agree to the Lease extension, the Guarantor shall then seek to obtain from the Borrower its agreement to extend the term of the Credit Notes for an additional two and one half year term, so that the entire principal and accrued interest under each of the Credit Notes is fully amortized in level installments over its remaining term as so extended. If the Lessee and the Borrower agree to the Lease extension and the Borrower further agrees to extend the Credit Notes, both as described in this Section 5, and a fully executed copy of the Lease amendment is provided to the Lender, together with such other opinions, certificates and other documents as the Lender may reasonably request, and the Borrower delivers to Lender fully executed copies of the Credit Notes as so revised, together with all such other opinions, certificates and other documents as Lender may reasonably request (with all such documents to be in form and substance reasonably satisfactory to the Lender) and if all of such events occur within not more than thirty days from the date of delivery to the Borrower of the notice from the Lender described in the first sentence of this Section 5, then, upon the effectiveness of such Lease amendment and revised Credit Notes, the Guarantor shall be relieved of its obligation to make the Balloon Payment required by Section 4(a) or Section 4(b) hereof.

6. Restrictions on Actions of Guarantor. Except with the prior written consent of the Lender, the Guarantor shall not, so long as any Credit Note is outstanding:

(a) consolidate with or merge into any other corporation or entity, or permit any other corporation or entity to consolidate with or merge with it, unless the Guarantor is the surviving entity and, after such merger or



consolidation, the Guarantor's financial condition is not diminished in the reasonable opinion of Lender;

(b) make any distribution of substantially all of the Guarantor's property or assets;

(c) make any distribution or disposition of its equity interest in the Lessee or the Pledgor, or cause or permit the Pledgor to make any distribution or disposition of the Pledgor's equity interest in the Borrower;

(d) adoption of a plan of liquidation;

(e) assign, sell, lease or otherwise dispose of or transfer a substantial portion of the Guarantor's assets, whether now owned or hereinafter acquired;

provided, however, that notwithstanding the restrictions contained in this Section 6, the Guarantor shall be permitted to take any such action without the consent of the Lender if, prior to taking such restricted action, it tenders to Lender the Balloon Payment or, with the consent of the Lessee and the Borrower and so long as no Event of Default has occurred and is continuing under the Lease, it offers to extend the term of the Lease and the maturity of the Credit Notes pursuant to Section 5 hereof. If the Guarantor offers to extend the term of the Lease and the maturity of the Credit Notes, upon the circumstances described in the immediately preceding sentence, the Lender may refuse such offer, which refusal shall constitute the consent of the Lender to the action proposed to be taken by the Guarantor and otherwise prohibited by this Section 6, and the Guaranty shall continue in full force and effect.

7. Guarantor's Obligations Unconditional. The covenants and agreements of the Guarantor set forth in this Guaranty Agreement shall be primary obligations of the Guarantor, and such obligations shall be continuing, absolute and unconditional, shall not be subject to any counterclaim, setoff, deduction, diminution, abatement, recoupment, suspension, deferment, reduction of defense (other than full and strict compliance by the Guarantor with its obligations hereunder) based upon any claim that the Borrower, the Pledgor, or the Guarantor or any other person may have against the Lender or any other person, and shall remain in full force and effect without regard to, and shall not be released, discharged or in any way affected by, any circumstance or condition whatsoever (whether or not the Guarantor, the Borrower or the Pledgor shall have any knowledge or notice thereof), including, without limitation:

(a) any amendment, modification, addition, deletion, supplement or renewal to or of or other change in any of the Debt Documents or the Lease;

(b) any waiver, consent, extension, indulgence, compromise, release or other action or inaction under or in respect of any of the Debt Documents, or any exercise or non-exercise by the Lender of any right, remedy, power or privilege under or in respect of any of the Debt Documents;

(c) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding with respect to the Borrower, the Pledgor, the Guarantor, the Lessee or any of their respective properties or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding;

(d) any limitation on the liability or obligations of the Borrower or any other person under the Debt Documents, any collateral security for the obligations under the Loan Agreement or any other guaranty of the Credit Notes or any discharge, termination, cancellation, frustration, irregularity, invalidity or unenforceability, in whole or in part, of any of the foregoing;

(e) any defect in the title, compliance with specifications, condition, design, operation or fitness for use of, or any damage to or loss or destruction of, or any interruption or cessation in the use of the Units or any thereof by any person for any reason whatsoever (including, without limitation, any governmental prohibition or restriction, condemnation, requisition, seizure or any other act on the part of any governmental or military authority, or any act of God or of the public enemy) regardless of the duration thereof even though such duration would otherwise constitute a frustration of a contract, whether or not resulting from accident and whether or not without fault on the part of the Borrower or any other person;

(f) any merger or consolidation of the Borrower, the Pledgor or the Guarantor, or the Lessee into or with any other corporation or any sale, lease or transfer of any of the assets of the Borrower, the Pledgor, the Guarantor or the Lessee to any other person;

(g) any change in the ownership of any shares of capital stock of the Borrower, the Pledgor, or the Lessee; or

(h) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing and any other

circumstance that might otherwise constitute a legal or equitable defense or discharge of the liabilities of a guarantor or surety or that might otherwise limit recourse against the Guarantor.

The obligations of the Guarantor set forth herein constitute the full recourse obligations of the Guarantor enforceable against it to the full extent of all of its assets and properties.

Notwithstanding anything to the contrary in this Guaranty, Guarantor shall be relieved of any further obligation hereunder (i) upon Guarantor's payment of the Balloon Payment to Lender and such payment having been indefeasibly vested in the Lender, or (ii) upon Guarantor being relieved of its obligation to make the Balloon Payment under the provisions of Section 5 hereof.

8. Waiver and Agreement. The Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Credit Notes or other obligations under the Debt Documents or the Lease and notice of or proof of reliance by the Lender upon this Guaranty Agreement or acceptance of this Guaranty Agreement, and the Credit Notes, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guaranty Agreement, and all dealings between the Borrower, the Pledgor or the Guarantor and the Lender shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guaranty Agreement. The Guarantor unconditionally waives, to the extent permitted by applicable laws, (a) acceptance of this Guaranty Agreement and proof of reliance by the Lender hereon, (b) notice of any of the matters referred to in Section 7 hereof, or any right to consent or assent to any thereof, (c) all notices that may be required by statute, rule of law or otherwise, now or hereafter in effect, to preserve intact any rights against the Guarantor, including without limitation, any demand, presentment, protest, proof of notice of nonpayment under the Credit Notes, and notice of default or any failure on the part of the Borrower or any other party to perform and comply with any covenant, agreement, term or condition of the Debt Documents, (d) any right to the enforcement, assertion or exercise against the Borrower or any other party of any right, power, privilege or remedy conferred in the Debt Documents or otherwise, (e) any requirement of diligence on the part of any person, (f) any requirement of the Lender to take any action whatsoever, to exhaust any remedies or to mitigate the damages resulting from a default by any person under the Debt Documents, (g) any notice of any sale, transfer or other disposition by any person of any right, title to or interest in the Debt Documents, the Lease or the Units, and (h) any other

circumstance whatsoever that might otherwise constitute a legal or equitable discharge, release or defense of a guarantor or surety, or that might otherwise limit recourse against the Guarantor.

9. Certain Rights and Powers of the Lender. No failure to exercise and no delay in exercising, on the part of the Lender, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any rights, power or privilege preclude any other or former exercise thereof, or the exercise of any other power or right. Each and every right and remedy of the Lender shall, to the extent permitted by law, be cumulative and shall be in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity.

At the option of the Lender, at any time prior to the Guarantor being relieved of any further obligation hereunder pursuant to the provisions of Section 7 hereof, the Guarantor may be joined in any action or proceeding commenced by the Lender against the Borrower in connection with or based on the Loan Agreement, or any provision thereof, and recovery may be had against the Guarantor in such action or proceeding or in any independent action or proceeding against the Guarantor, without any requirement that the Lender first assert, prosecute or exhaust any remedy or claim against the Borrower.

10. Term of Guaranty Agreement. This Guaranty Agreement and all guaranties, covenants and agreements of the Guarantor contained herein shall continue in full force and effect and shall not be discharged until the first to occur of (i) payment in full of all of the Credit Notes and such payments shall have been indefeasibly vested in the Lender, (ii) payment of the Balloon Payment and such payment shall have been indefeasibly vested in the Lender or (iii) the receipt by the Lender of a fully executed copy of the Lease and the Credit Notes as extended pursuant to the provisions of Section 5 hereof. If, as a result of any bankruptcy, dissolution, reorganization, insolvency, arrangement or liquidation proceedings (or proceedings similar in purpose or effect), or if for any other reason, any payment received by the Lender in respect of that portion of the Credit Notes which is guaranteed by Guarantor hereunder is rescinded or must be returned by the Lender, this Guaranty Agreement shall continue to be effective as if such payment had not been made and, in any event, as provided in the preceding sentence.

11. Additional Payment. The Credit Notes, of which certain of the payment, performance of and compliance are guaranteed by the Guarantor hereunder, shall be enforced without

giving effect to any termination of the Loan Agreement or the Credit Notes, other than in accordance with their respective terms, or to any limitation, discharge, cancellation, invalidity or unenforceability of the obligations of the Borrower thereunder, in whole or in part. If the Loan Agreement or the Credit Notes shall be terminated in whole or in part other than in accordance with their respective terms, or if the obligations of the Borrower thereunder shall be limited, discharged, terminated, cancelled or determined to be invalid or unenforceable in whole or in part, the Guarantor nevertheless agrees to pay amounts equal to the amounts payable by it at the times such amounts would have become due and payable by it in accordance with the terms hereof had the Loan Agreement or the Credit Notes, as the case may be, not been terminated or the obligations of the Borrower not been so limited, discharged, terminated, cancelled or determined to be invalid or unenforceable.

12. Representations and Warranties. The Guarantor represents and warrants that:

(a) the Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power and authority to enter into this Guaranty Agreement and to perform its obligations hereunder and it has duly authorized, executed and delivered this Guaranty Agreement, and such document constitutes a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms.

(b) The Guarantor is the owner of all of the issued and outstanding capital stock of the Lessee and of all of the issued and outstanding capital stock of the Pledgor.

13. Notices. All communications under this Guaranty Agreement shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) five (5) days after the date on which it shall have been mailed by United States mail (by certified mail, postage prepaid, return receipt requested), or (c) in the case of notice by such telecommunications device, when properly transmitted, addressed to each party at the following addresses:

If to the Guarantor:

Illinois Central Corporation  
233 North Michigan Avenue  
Chicago, Illinois 60601  
Attention: D. W. Phillips  
Fax No.: 312-819-7839

With a copy to:

Peter V. Fazio, Jr.  
Schiff, Hardin & Waite  
7200 Sears Tower  
Chicago, Illinois 60606  
Fax No.: 312-258-5600

If to Lender:

Hitachi Credit America Corp.  
777 West Putnam Avenue  
Greenwich, Connecticut 06830  
Attention: Chief Operating Officer  
Fax No.: 203-531-0601

With a copy to:

Robert W. Kleinman  
Ross & Hardies  
150 North Michigan Avenue  
Suite 2500  
Chicago, Illinois 60601  
Fax No.: 312-750-8600

or to such other address as any party hereto may designate by prior written notice.

14. Separability of this Agreement. In case any provision of this Agreement or any application thereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions and statements and any other application thereof shall not in any way be affected or impaired thereby.

15. Further Assurances. The Guarantor hereby agrees to execute and deliver all such instruments and take all such action as the Lender may from time to time reasonably request in order to fully effectuate the purposes of this Guaranty Agreement.

16. Miscellaneous. This Guaranty Agreement is being delivered and is intended to be performed in the State of

Illinois and shall be construed and enforced in accordance with and governed by the laws of the State of Illinois, without regard to its conflicts of law doctrine. This Guaranty Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the Lender. This Guaranty Agreement embodies the entire agreement and understanding between the Guarantor and the Lender and supersedes all prior agreements and understanding relating to the subject matter hereof. The headings in this Guaranty Agreement are for purposes of references only, and shall not limit or otherwise affect the meaning hereof. This Guaranty Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Guaranty Agreement to be entered into by their respective officers thereunto duly authorized.

ILLINOIS CENTRAL CORPORATION, Guarantor

By: \_\_\_\_\_  
Title: \_\_\_\_\_

HITACHI CREDIT AMERICA CORP., Lender

By: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT I

OPINION OF COUNSEL TO LESSEE

1. Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has duly qualified and is authorized to do business and is in good standing as a foreign corporation in each jurisdiction where the character of its property and the nature of its activities (including the leasing of the Units) make such qualification necessary.

2. Lessee has the corporate power and authority to own or lease its properties and operate its business as now conducted, and to execute, deliver and perform its obligations under the Railroad Locomotive Lease Agreement (the "Lease") and the Acknowledgement and Notice of Assignment (the "Acknowledgement"). The Lease and the Acknowledgement are hereinafter collectively referred to as collectively as the "Lessee's Documents".

3. The Lessee's Documents have been duly authorized, executed and delivered by the Lessee and are the legal, valid and binding obligations of the Lessee, enforceable against the Lessee in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles regardless of whether considered in a proceeding in equity or in law.

4. No approval of any federal or other governmental authority is necessary to be obtained by the Lessee for the execution, delivery and performance by the Lessee of the Lessee's Documents or for the consummation of the transactions contemplated thereby, including without limitation the use and maintenance of the locomotives being leased by the Lessee under the Lease.

5. Neither the execution, delivery or performance by the Lessee of the Lessee's Documents nor compliance with the terms and provisions thereof, conflicts or will conflict or will result in a breach or violation of any of the terms, conditions or provisions of any federal law, governmental rule or regulations presently in effect having applicability to the Lessee, or the Articles of Incorporation or Bylaws of the Lessee, or any order, writ, injunction or decree of any court or governmental authority which is presently in effect having



applicability to the Lessee or by which it or any of its properties are bound, or of any indenture or mortgage or any contract or other agreement or instrument to which the Lessee is a party or by which it or any of its properties are bound, or constitute or will constitute a default thereunder.

6. There are no actions, suits or proceedings pending or threatened against or affecting the Lessee, at law or in equity, before or by any federal, state, municipal or other governmental court, department, commission, board or other agency, domestic or foreign, which involves the possibility of any judgment or liability not fully covered by insurance, or which in the aggregate may be deemed material in the light of the business and assets of the Lessee, or which may cause any material adverse change either in the business or property of the Lessee or in its ability to fully perform its liabilities and obligations under the Lessee's Documents.

EXHIBIT J

OPINION OF COUNSEL TO GUARANTOR

1. Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has duly qualified and is authorized to do business and is in good standing as a foreign corporation in each jurisdiction where the character of its property and the nature of its activities make such qualification necessary.

2. Guarantor has the corporate power and authority to own or lease its properties and operate its business as now conducted, and to execute, deliver and perform its obligations under the Guaranty Agreement (the "Guaranty").

3. The Guaranty has been duly authorized, executed and delivered by the Guarantor and is the legal, valid and binding obligations of the Guarantor, enforceable against the Guarantor in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles regardless of whether considered in a proceeding in equity or in law.

4. No approval of any federal or other governmental authority is necessary to be obtained by the Guarantor for the execution, delivery and performance by the Guarantor of the Guaranty or for the consummation of the transactions contemplated thereby.

5. Neither the execution, delivery or performance by the Guarantor of the Guaranty nor compliance with the terms and provisions thereof, conflicts or will conflict or will result in a breach or violation of any of the terms, conditions or provisions of any federal law, governmental rule or regulations presently in effect having applicability to the Guarantor, or the Articles of Incorporation or Bylaws of the Guarantor, or any order, writ, injunction or decree of any court or governmental authority which is presently in effect having applicability to the Guarantor or by which it or any of its properties are bound, or of any indenture or mortgage or any contract or other agreement or instrument to which the Guarantor is a party or by which it or any of its properties are bound, or constitute or will constitute a default thereunder.

6. There are no actions, suits or proceedings pending or threatened against or affecting the Guarantor, at law or in

equity, before or by any federal, state, municipal or other governmental court, department, commission, board or other agency, domestic or foreign, which involves the possibility of any judgment or liability not fully covered by insurance, or which in the aggregate may be deemed material in the light of the business and assets of the Guarantor, or which may cause any material adverse change either in the business or property of the Guarantor or in its ability to fully perform its liabilities and obligations under the Guaranty.

EXHIBIT K

OPINION OF COUNSEL TO PLEDGOR

1. Pledgor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has duly qualified and is authorized to do business and is in good standing as a foreign corporation in each jurisdiction where the character of its property and the nature of its activities make such qualification necessary.

2. Pledgor has the corporate power and authority to own or lease its properties and operate its business as now conducted, and to execute, deliver and perform its obligations under the Pledge Agreement.

3. The Pledge Agreement has been duly authorized, executed and delivered by the Pledgor and is the legal, valid and binding obligations of the Pledgor, enforceable against the Pledgor in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles regardless of whether considered in a proceeding in equity or in law.

4. No approval of any federal or other governmental authority is necessary to be obtained by the Pledgor for the execution, delivery and performance by the Pledgor of the Pledge Agreement or for the consummation of the transactions contemplated thereby.

5. Neither the execution, delivery or performance by the Pledgor of the Pledge Agreement nor compliance with the terms and provisions thereof, conflicts or will conflict or will result in a breach or violation of any of the terms, conditions or provisions of any federal law, governmental rule or regulations presently in effect having applicability to the Pledgor, or the Articles of Incorporation or Bylaws of the Pledgor, or any order, writ, injunction or decree of any court or governmental authority which is presently in effect having applicability to the Pledgor or by which it or any of its properties are bound, or of any indenture or mortgage or any contract or other agreement or instrument to which the Pledgor is a party or by which it or any of its properties are bound, or constitute or will constitute a default thereunder.

6. There are no actions, suits or proceedings pending or threatened against or affecting the Pledgor, at law or in

equity, before or by any federal, state, municipal or other governmental court, department, commission, board or other agency, domestic or foreign, which involves the possibility of any judgment or liability not fully covered by insurance, or which in the aggregate may be deemed material in the light of the business and assets of the Pledgor, or which may cause any material adverse change either in the business or property of the Pledgor or in its ability to fully perform its liabilities and obligations under the Pledge Agreement.

7. The security interest of the Lender in the Shares (as defined in the Pledge Agreement), provided for and granted in the Pledge Agreement, has been validly and duly created, has attached, has been properly perfected and is a first priority security interest in the Shares, enforceable against the Pledgor and all third parties in accordance with the terms thereof.

8. Pledgor has good and valid title to the Shares free of all liens, claims, demands, encumbrances, privileges, pledges or other charges of every nature and kind whatsoever.

EXHIBIT L

OPINION OF COUNSEL TO BORROWER

1. Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada, and has duly qualified and is authorized to do business and is in good standing as a foreign corporation in each jurisdiction where the character of its property and the nature of its activities (including the leasing of the Units) make such qualification necessary.

2. Borrower has the corporate power and authority to own or lease its properties and operate its business as now conducted, and to execute, deliver and perform its obligations under the Loan and Security Agreement, the Initial Funding Credit Note and the Assignment of Lease and Agreement (the "Borrower's Debt Documents").

3. Borrower's Debt Documents have been duly authorized, executed and delivered by the Borrower and are the legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles regardless of whether considered in a proceeding in equity or in law.

4. No approval of any federal or other governmental authority is necessary to be obtained by the Borrower for the execution, delivery and performance by the Borrower of Borrower's Debt Documents or for the consummation of the transactions contemplated thereby.

5. Neither the execution, delivery or performance by the Borrower of Borrower's Debt Documents nor compliance with the terms and provisions thereof, conflicts or will conflict or will result in a breach or violation of any of the terms, conditions or provisions of any federal law, governmental rule or regulations presently in effect having applicability to the Borrower, or the Articles of Incorporation or Bylaws of the Borrower, or any order, writ, injunction or decree of any court or governmental authority which is presently in effect having applicability to the Borrower or by which it or any of its properties are bound, or of any indenture or mortgage or any contract or other agreement or instrument to which the Borrower

is a party or by which it or any of its properties are bound, or constitute or will constitute a default thereunder.

6. There are no actions, suits or proceedings pending or threatened against or affecting the Borrower, at law or in equity, before or by any federal, state, municipal or other governmental court, department, commission, board or other agency, domestic or foreign, which involves the possibility of any judgment or liability not fully covered by insurance, or which in the aggregate may be deemed material in the light of the business and assets of the Borrower, or which may cause any material adverse change either in the business or property of the Borrower or in its ability to fully perform its liabilities and obligations under Borrower's Debt Documents.

7. The security interest of the Lender in the Collateral, provided for and granted in Article B of the Loan and Security Agreement, has been validly and duly created, has attached, has been properly perfected and is a first priority security interest in the Collateral, enforceable against the Borrower and all third parties in accordance with the terms thereof.

8. Borrower has good and valid title to the Units and the Lease free of all liens, claims, demands, encumbrances, privileges, pledges or other charges of every nature and kind whatsoever, other than the rights of the Lessee under the Lease.

EXHIBIT M

ANNUAL COVENANT COMPLIANCE CERTIFICATE

This Annual Covenant Compliance Certificate is furnished pursuant to subsection (x) of Section A.4 of the Loan and Security Agreement dated as of December 6, 1991 by and between IC Leasing Corporation I and Hitachi Credit America Corp. (the "Loan Agreement"). Unless otherwise defined herein, the terms used in this Certificate have the meaning assigned to them in the Loan Agreement.

The undersigned, being the duly authorized \_\_\_\_\_ of the Borrower, hereby certifies in his capacity as such officer that he has undertaken a review of the business and operations of the Borrower to determine the Borrower's compliance with the covenants, terms and provisions of the Loan Agreement and that, as a result of such review, he has no knowledge of any breach by the Borrower of any of the covenants, conditions, terms or provisions of the Loan Agreement imposed upon the Borrower, nor does he have any knowledge of any Event of Default under the Loan Agreement or of any event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default thereunder.

IN WITNESS WHEREOF, the undersigned has set his hand  
this \_\_\_\_ day of \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
Name:  
Title:

Authorized officer of IC LEASING  
CORPORATION I



draft  
S/ed

[STATIONERY OF HITACHI CREDIT AMERICA CORP.]

December \_\_, 1991

Illinois Central Railroad Company  
233 North Michigan Avenue  
Chicago, IL 60601  
Attention: D. W. Phillips  
Vice President & Chief  
Financial Officer

IC Leasing Corporation I  
1077 East Sahara Ave.  
Las Vegas, Nevada 89193  
Attention: \_\_\_\_\_

Gentlemen:

Reference is made to the Assignment of Lease and Agreement dated as of December \_\_, 1991 (the "Assignment of Lease and Agreement") between IC Leasing Corporation I ("Borrower") and Hitachi Credit America Corp. ("Lender"), which Assignment of Lease and Agreement was acknowledged by Illinois Central Railroad Company ("Lessee") pursuant to the Acknowledgement and Notice of Assignment (the "Acknowledgement") executed by Lessee. The Assignment of Lease and Agreement and the Acknowledgement were delivered in accordance with requirements of the Loan and Security Agreement dated as of December 6, 1991 (the "Agreement") and entered into between Borrower and Lender. Unless the context otherwise requires, capitalized terms used herein shall have the meanings assigned thereto in the Agreement.

As an accomodation to Borrower and for administrative convenience, Borrower has requested and Lender has agreed that notwithstanding the provisions of paragraph (1) of the Acknowledgement and Section (1) of the Assignment of Lease and Agreement, the Lessee is authorized and instructed to pay to Lender only such part of the rentals and casualty payments due under the Lease as is necessary to discharge the installment of principal and interest (and required prepayments, if any) then due under the Credit Notes and to make any excess payment of rental or casualty payment directly to the Borrower, in accordance with the payment instructions set forth in the Lease. Lessee may from time to time inquire of the Lender as to the amount of principal, interest and other payments due on any payment date under the Credit Notes.

The instructions contained in this letter may be revoked at any time by Lender upon notice delivered to Borrower and Lessee. After receipt of such notice by Lessee, Lessee shall make all payments due and to become due under the Lease directly to Lender in accordance with the provisions of paragraph (1) of

the Acknowledgement for application by Lender in accordance with the provisions of Section (1) of the Assignment of Lease and Agreement.

HITACHI CREDIT AMERICA CORP.

By: \_\_\_\_\_  
Its

Accepted and Agreed this  
\_\_\_\_ day of December, 1991.

IC LEASING CORPORATION I

By \_\_\_\_\_  
Its

ILLINOIS CENTRAL RAILROAD COMPANY

By \_\_\_\_\_  
Its